

Justice, Punishment and the Medieval Muslim Imagination

CHRISTIAN LANGE



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How was the use of violence against Muslims explained and justified in medieval Islam? What role did state punishment play in delineating the private from the public sphere? What strategies were deployed to cope with the suffering caused by punishment? These questions are explored in Christian Lange's in-depth study of the phenomenon of punishment, both divine and human, in eleventh- to thirteenth-century Islamic society. The book examines the relationship between state and society in meting out justice, Muslim attitudes to hell and the punishments that were in store in the afterlife, and the legal dimensions of punishment – how different types of retribution were justified, circumscribed, or rejected altogether by Muslim jurists. The crossdisciplinary approach embraced in this study, which is based on a wide variety of Persian and Arabic sources, sheds light on the interplay between theory and practice in Islamic criminal law, and between executive power and the religious imagination of medieval Muslim society at large.

CHRISTIAN LANGE is Lecturer in Islamic Studies in the School of Divinity at the University of Edinburgh.

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CHRISTIAN LANGE

University of Edinburgh



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Abbreviations

<i>BSOAS</i>	<i>Bulletin of the School of Oriental and African Studies</i>
<i>CHI5</i>	<i>The Cambridge History of Iran, Vol. V, The Saljuq and Mongol Periods</i> . Edited by J. A. Boyle. Cambridge: Cambridge University Press, [1968]
<i>EI1</i>	<i>The Encyclopaedia of Islam</i> . 5 vols. Edited by T. Houtsma et al. Leiden: Brill, 1913–34
<i>EI2</i>	<i>The Encyclopaedia of Islam: New Edition</i> . 12 vols. Edited by H. A. R. Gibb et al. Leiden: Brill, 1954–2004
<i>EQ</i>	<i>The Encyclopaedia of the Qurʾān</i> . 5 vols. Edited by Jane Dammen McAuliffe et al. Leiden: Brill, 2001–6
<i>GAL</i>	Carl Brockelmann. <i>Geschichte der arabischen Literatur</i> . First published 1898. Leiden: Brill, 1943–9
<i>IJMES</i>	<i>International Journal of Middle East Studies</i>
<i>ILS</i>	<i>Islamic Law and Society</i>
<i>IOS</i>	<i>Israel Oriental Studies</i>
<i>JAOS</i>	<i>Journal of the American Oriental Society</i>
<i>JRAS</i>	<i>Journal of the Royal Asiatic Society</i>
<i>LN</i>	ʿAlī Akbar Dihkhudā. <i>Lughatnāma</i> . First published 1946–. 6 vols. Tehran: Muʿassasa-yi Dikhudā, 1363–/[1985–]
<i>MA</i>	ʿAbbūd al-Shālījī. <i>Mawsūʿat al-ʿadhāb</i> . 7 vols. Beirut: al-Dār al-ʿArabiyya li-l-Mawsūʿāt, 1980
<i>SI</i>	<i>Studia Islamica</i>
<i>ZDMG</i>	<i>Zeitschrift der deutschen morgenländischen Gesellschaft</i>

Introduction

This book is a study of the theory and the practice of punishment in the later Islamic Middle Period, in particular under the Saljūq rulers of Iraq and Persia (fifth/eleventh and sixth/twelfth centuries). Punishment is defined here as the premeditated use of legitimate force against members of the Muslim polity.¹ The goal of this endeavor is to throw light on a number of issues: how was the use of violence against Muslims explained and justified under the conditions of a militarized régime such as that of the Saljūqs? How were the interests of individuals to preserve the integrity of their bodies defined vis-à-vis the governing classes' claim to power? Phrased differently, what role did punishment play in delineating the private from the public sphere? Finally, what cognitive strategies did people, both intellectuals and commoners, devise and deploy in order to cope with the suffering caused by punishment? From a religious perspective, for example, how did they conceive of the relationship between punishment in this world and the next? Such questions not only bring to the fore some fundamental principles of social organization; they also address deeply embedded categories of thought, since a society's system of punishment and reward is a prime indicator of how it defines the limits of justice. Thus, this study hopes to contribute to our understanding of the very fabric of medieval Islamic life.

A study of punishment with specific regard to the Saljūqs is promising for several reasons. The Saljūq period was an important formative stage in the development of Islamic civilization. With the irruption of the nomadic Saljūqs into Khurāsān (431/1040) and Iraq (447/1055), for the first time in the history of the Nile-to-Oxus region a Turkish military class rose to autonomous rule. True, Turkish elements had been nurtured over a long period in the military administration of the central Islamic lands. From the time of the

¹ From a sociological perspective, the legitimacy of the Saljūq state was based on a mix of legal, traditional, and charismatic grounds. See Max Weber, *Economy and Society* (1922, Berkeley: University of California Press, 1978), II, 212–45. Here I take legitimate punishment to be tantamount to state punishment, i.e., legitimate violence “against the inside,” rather than violence directed against the outside, as for example in the law of warfare or *jihād*. As such, state violence did not go uncontested within the Saljūq context. See parts II and III of this study.

caliph Mu‘taṣim (reigned 218/833–227/842), Turkish soldiers had formed the military élite of the caliphate.² The Saljūq rise to rule, however, brought about fundamental changes. The early Saljūq rulers, under the brilliant leadership of the vizier Niẓām al-Mulk (r. 455/1063–485/1092), attempted to reintroduce, after a period of disorganization, a strong central administration, based on a number of key concepts: the temporal authority of the sultān vis-à-vis the caliph, the control of the military by means of a system of centrally distributed fiefs (*iqṭāʿ*), the close supervision of the educational system, and the establishment of a well-trained, mostly Persian bureaucracy.³

Tendencies of decentralization became manifest in the second half of the Saljūq period (511/1118–590/1194). This notwithstanding, the Saljūq period was a time of prosperity and flourishing of Islamic culture in Iraq and Persia. Intense commercial activity in the great urban centers helped to create an atmosphere of cosmopolitan mobility.⁴ The creation of institutions of higher learning (*madrāsas*) went hand in hand with the institutional reinforcement of a separate class of religious and legal scholars. Luminaries such as Shīrāzī (d. 476/1083), Juwaynī (d. 478/1085), Sarakhsī (d. c. 490/1096), and the celebrated Ghazālī (d. 505/1111) ushered in the late classical age of Islamic theology and law. The first Ṣūfī brotherhoods were founded. Mystical literature reached an early climax in the work of Sanāʿī (d. prob. 525/1131), and Persian poetry peaked in the panegyrics of Mu‘izzī (d. c. 520/1126) and Anvarī (d. c. 560/1164). By creating lasting structures of political, social, and cultural order, the Saljūqs greatly contributed to what Marshall Hodgson called the “victory of the new Sunnī internationalism.”⁵ In the judgment of one of the leading historians of the period, the Saljūqs “revitalised Islam.”⁶

Regardless of the considerable interest of this period in Islamic history, studies of the Saljūqs, especially of aspects of their social history, are rare.⁷

² This fact has led some observers to characterize the Saljūq takeover as a “conquest from the inside.” See Claude Cahen, “The Turkish Invasion: The Selchūkids,” in Kenneth M. Setton (ed.), *A History of the Crusades* (1955, 2nd ed., Madison: University of Wisconsin Press, 1969–89), I, 141.

³ Cf. Carla Klausner, *The Seljuk Vezirate: A Study of Civil Administration 1055–1194* (Cambridge: Harvard University Press, 1973), 5.

⁴ Stefan Heidemann, in a detailed study of the fiscal and economic development of north Syria and north Mesopotamia, has argued that the Saljūq system of *iqṭāʿ*s, introduced under Niẓām al-Mulk, favored agriculture and urban trade. See his *Die Renaissance der Städte in Nordsyrien und Nordmesopotamien: städtische Entwicklung und wirtschaftliche Bedingungen in ar-Raqqa und Harrān von der Zeit der beduinischen Vorherrschaft bis zu den Seldschuken* (Leiden: Brill, 2002), 445, 448.

⁵ Marshall G. S. Hodgson, *The Venture of Islam* (Chicago: University of Chicago Press, 1974), II, 255.

⁶ *EI2*, s.v. Saldjūkids, VIII, 936b (C. E. Bosworth).

⁷ It appears that Claude Cahen’s statement still holds true that “[t]he Seljuqs, in spite of several useful partial studies, still await the comprehensive historian whom their role in Muslim history would seem to deserve.” See his “The Historiography of the Seljuq Period,” in Bernard Lewis and P. M. Holt (eds.), *Historians of the Middle East* (London: Oxford University Press, 1962), 59. The closest to such an endeavor seems to be Clifford E. Bosworth, “The Political and Dynastic History of the Iranian World (AD 1000–1217),” *CHI5*, 1–202. See also the same

This state of things prevails even though researchers can rely on a rich variety of literary sources from the period. The present work surveys a broad range of sources: in addition to the writings of historians, the works of administrative advisors, poets, and theologians as well as jurists are taken into account. In order to facilitate this endeavor, I lay emphasis on a period of more or less exactly one hundred years: from 447/1055, the Saljūqs' entry into Baghdad, to 552/1157, the death of sultān Sanjar, the ruler of Khurāsān and last of the Great Saljūqs. I further restrict the scope of this study by focusing on the lands of Iraq and greater Persia (including Khwārazm, Transoxania, and Afghanistan). Examples from earlier (e.g., Būyid) or later (e.g., Khwārazmian) dynasties, or from the Saljūq appanage kingdoms in Anatolia, the Jazīra, Syria, and Kirmān are cited only occasionally, and only in order to illustrate points made in connection with the Saljūqs of Iraq and Persia. Lastly, another important limit of this study must be mentioned. Since political rule, and therefore the administration of punishment, lay in the hands of Sunnī rulers, I rely primarily on Sunnī sources.⁸

The multigenre approach adopted in this study results in a synchronic, rather than a diachronic, analysis of the practice and theory of punishment under the Saljūqs. The historical genesis of certain punishments, or the gradual development of intellectual traditions about individual practices, receives somewhat less attention. Rather than historical change, this study proposes to investigate social statics.⁹ The goal of this project is, first, to elucidate how different segments of society thought about the social fact of

author's many entries in the *Encyclopaedia of Islam* that deal with Saljūq history. One should also mention the works of Turkish scholars such as İbrahim Kafesoğlu, *Sultan Melikşah devrinde büyük Selçuklu İmparatorluğu* (Istanbul: O. Yalçın Matbaası, 1953), Mehmet Altay Köymen, *Büyük Selçuklu İmparatorluğu tarihi* (Ankara: Türk Tarih Kurumu Basımevi, 1954), Osman Turan, *Selçuklar tarihi ve Türk-İslam medeniyeti* (Ankara: Türk Kültürünü Araştırma Enstitüsü, 1965), and Abdülkerim Özaydın, *Sultan Muhammed Tapar devri Selçuklu tarihi: 498-511/1105-1118* (Ankara: Türk Tarih Kurumu Basımevi, 1990), all of whom, however, tend to focus heavily on political history, or *Ereignisgeschichte*. For a recent contribution to the political and social history of the Saljūq period, see Omid Safi, *The Politics of Knowledge in Premodern Islam: Negotiating Ideology and Religious Inquiry* (Chapel Hill: University of North Carolina Press, 2006).

⁸ No doubt it would be well worthwhile to look for Shīrī responses (of which I presume there are many) to the use of punitive authority by the Sunnī rulers. Regrettably, however, such an investigation has proven beyond the scope of the present work. Shīrī centers in Iraq and Western Iran seem to have flourished in Saljūq times. Shīrī administrators at times ascended to high government positions, and in the second half of the sixth/twelfth century Shīrī *madrasas* could be found in Rayy, Qum, Kāshān, Āva, Varāmīn, Sabzavār, and Baghdad. See Alessandro Bausani, "Religion in the Saljuq Period," *CHIS*, 292-5. C. E. Bosworth states that "Transoxania and Khurāsān were strongholds of Sunnī orthodoxy, apart from communities of sayyids in places like Nishāpūr, Tūs and Bayhaq, but Shīrīsm had some strong groups in northwestern Persia, with the Zaydīs in the Caspian provinces . . . and the Dja'farīs or Twelvers influential in the urban centres of Djībāl like Rayy, Qazwīn, Qumm, Āva and Kāshān, having their own *madrasas* and *ḳubbas* . . . or tombs in some of these centres": *EI2*, s.v. Salḳūḳids, VIII, 951b.

⁹ For the social statics approach in Emile Durkheim's *Les règles de la méthode sociologique* (1895), see Raymond Aron, *Main Currents in Sociological Thought II: Durkheim, Pareto, Weber* (1967, New York: Anchor Books, 1970), 67-79, esp. 77.

punishment. I attempt to show, second, how these different discourses inter-related and mutually influenced one another; and, third, how they may have informed practice. While I strongly believe in the benefits that can be derived from this kind of multidisciplinary and topical approach, I admit that the three parts of this book are connected rather loosely; in fact, each could be taken to constitute a separate study of “punishment.” It is up to the reader to judge to what extent I have achieved the ideal conception of an *histoire totale*, that is, to reconstruct as many contemporary perspectives as possible on a single cultural phenomenon.¹⁰

A further note on methodology: in this study, I embrace methodological pluralism, which I believe is the specific strength of *Religionswissenschaft*, the academic field of inquiry in which this study is primarily located. While part I of this study draws its main inspiration from Michel Foucault’s *Discipline and Punish* (1975), especially his analysis of the spectacle of the scaffold as a “political tactic,”¹¹ part II develops a fourfold interpretive model of the Muslim hell, using as its main inspirations Rudolph Otto’s famous concept of the *mysterium tremendum*, Claude Lévi-Strauss’s structuralism, the “hermeneutics of suspicion” developed, *inter alios*, by Paul Ricoeur, and Max Weber’s and Clifford Geertz’s contributions to the study of religion, especially their insight that religious ideas can prompt certain forms of social action, while at the same time being determined by their social context.¹² Part III of this study, finally, combines legal analysis with insights from cultural anthropology, especially theories of shame.

The historical context

For the purpose of historical summary, the Saljūq period in Iraq and Persia can be divided into three parts: first, there is the period of conquest (c. 426/1035–447/1055); second, the period of consolidation and centralized rule (447/1055–511/1118); and, third, the period of disintegration and localization of political rule (511/1118–590/1194).¹³ After 511/1118, Aḥmad Sanjar b. Malikshāh, the Saljūq ruler of Khurāsān, assumed the title of Great Saljūq and succeeded in ruling the eastern part of the empire with firmness until his death in 552/1157; his rule therefore stands out against the general decline of the western Saljūqs.

¹⁰ For the concept of *histoire totale* in the study of religion, see Christoph Auffarth, *Irdische Wege und himmlischer Lohn: Kreuzzug, Jerusalem und Fegefeuer in religionswissenschaftlicher Perspektive* (Göttingen: Vandenhoeck & Ruprecht, 2002), 24.

¹¹ Michel Foucault, *Discipline and Punish* (1975, New York: Vintage Books, 1995), 23.

¹² See Clifford Geertz, “Thick Description: Toward an Interpretive Theory of Culture,” in Geertz, *The Interpretation of Culture* (1973, New York: Basic Books, 2000), 5.

¹³ To let the third and last period in Saljūq history begin with the death of the sulṭān Muḥammad b. Malikshāh rather than that of Malikshāh is in accordance with what Marshall Hodgson proposes in his *Venture*, II, 12, 21, 53.

The Saljūqs were a tribe of the Ghuzz or Oghuz Turks converted to Islam when settling in the lower Jaxartes valley (present-day Uzbekistan) in the late fourth/tenth century.¹⁴ Hired as mercenaries by the Samānids (r. 204/819–395/1005) and the Ghaznavids (r. 367/977–583/1187), from 426/1035 they gradually moved southwards into Khurāsān, conquering Nishāpūr in 429/1038 and crushing the army of the Ghaznavid sultān Mas‘ūd b. Muḥammad in 431/1040 at Dandānqān. Once northeast Persia was in their hands, the Saljūqs spread further westwards. While Chaghri Beg, one of the Saljūq chiefs, stayed in the east, his brother Tuḡhril Beg moved on to conquer Rayy (433/1041–2), Iṣfahān (443/1051), and, finally, Baghdad (447/1055). Supported by the considerable talent of their Persian vizier Niẓām al-Mulk, Tuḡhril’s successors Alp Arslān (r. 455/1063–465/1072) and Malikshāh (r. 465/1072–485/1092) governed Iraq and Persia from their capital at Iṣfahān, while subgroups of the Saljūq tribal confederation moved into Syria and Anatolia (battle of Malāzgird in 463/1071). During the reign of Malikshāh, the Saljūqs’ tribal notion of the rule of a *primus inter pares* was increasingly replaced with the Iranian conception of (semi)divine kingship. This Iranian tradition, represented by the empire’s Persian administrative élite, bestowed absolute power on the king and made his office hereditary. This view of kingship soon provoked discontent among the senior members of the Saljūq clan. In 466/1074, Malikshāh had to quell a revolt of his uncle Qāwurd, the ruler of Kirmān. Qāwurd regarded his position as senior member of the Saljūq family as a superior claim to the title of Great Saljūq. Likewise in 477/1084, Malikshāh’s own brother Tikish revolted in Khurāsān. Tikish, however, was defeated and jailed for life.

After the death of Malikshāh and that of his vizier Niẓām al-Mulk in the same year, the first signs of disintegration of Saljūq rule became manifest. Malikshāh’s three sons Barkyārūq (r. 488/1095–498/1105), Muḥammad (r. 498/1105–511/1118), and Sanjar (r. 511/1118–552/1157) disputed succession over Iraq, and the empire gradually “assumed the guise of a federation of autonomous princes.”¹⁵ Muḥammad b. Malikshāh was the last Saljūq ruler to exercise undisputed power in Iraq and West Persia; after his death, most Saljūq princes lost their effective authority to local military governors.

With Muḥammad’s demise, his brother Sanjar, who had been governor of Khurāsān since 490/1197, took on the title of Great Saljūq, defended his nominal supremacy in battle against Muḥammad’s son Maḥmūd (513/1119) and went on to rule over Khurāsān with relative stability, subjecting as his vassals the Ghaznavid kings of Afghanistan, the Qarakhānids of Transoxania, and the Khwārazmshāhs of the lower Oxus region. Sanjar increasingly turned

¹⁴ Clifford E. Bosworth, *The Ghaznavids: Their Empire in Afghanistan and Eastern Iran 994–1040* (Edinburgh: Edinburgh University Press, 1963), 220. See *ibid.*, 205–66, for an overview of the Saljūqs’ early history.

¹⁵ *EI2*, s.v. Berkyārūq, I, 1052a (C. Cahen).

his attention to the east, moving his capital to Marv in order to counteract the threat of nomadic groups filtering into Transoxania and Khurāsān. However, in 536/1141 he had to give up claims to Transoxania when his army was defeated on the Qatwān steppe by the Central Asian tribal confederation of the Qara Khitay.¹⁶ Things finally fell apart in 548/1153, when Ghuzz tribesmen of the upper Oxus regions, a group among Sanjar's nomad subjects, rose in rebellion against the harsh taxes imposed on them. After giving battle to Sanjar's army, they managed to capture the Great Saljūq. Sanjar lived through three years of humiliating captivity. The chroniclers speak of his starvation in a cage. Shortly after his successful escape and return to his devastated capital Marv, he died in 552/1157. With him, the authority of the Saljūqs in northeast Persia ceased.

In the west, structures of government had begun to disintegrate even earlier. After sultān Muḥammad's death in 511/1118, no fewer than five of his sons vied for rule. All held some degree of power in various parts of the land, but were more often than not dominated by their Turkish military "god-fathers," the *atabegs* (Turk. *ata*: "father," *beg*: "lord"). Maḥmūd b. Muḥammad was able to claim the title of sultān until his death in 525/1131. He was followed, after yet another interval of interfraternal warfare, by his son Mas'ūd (r. 529/1134–547/1152), but the latter's effective power was confined to central Iraq and the Jibāl region including Iṣfahān and Hamadhān. Fiefs had become personalized and hereditary,¹⁷ and the governors of the cities of the empire, such as the powerful military prefect (*shihna*) of Rayy, the *amīr* 'Abbās (d. 541/1146), increasingly challenged the overlordship of the Saljūq sultān, who ended up as just one among a score of ambitious local potentates.

Among these local rulers was the 'Abbāsīd caliph in Baghdad. By the time of Mustarshid (r. 512/1118–529/1135) the caliphate had already regained a measure of self-confidence and military strength.¹⁸ Mustarshid even ventured into battle with the Saljūq sultān Mas'ūd in Persia. Defeated near Hamadhān in 529/1135, he was murdered, allegedly by a Bāṭinī assassin, or perhaps on the order of the Saljūq sultān. Nevertheless, Mustarshid had set a precedent. The caliph was once again a player in the complex pattern of rule in Iraq. After the death of sultān Mas'ūd in 547/1152, Mustarshid's successor Muqtafī (r. 530/1136–555/1160) expelled the Saljūq military governor (*shihna*) from Baghdad. A small caliphal state was founded, and some years

¹⁶ Bosworth, "The Political and Dynastic History of the Iranian World," 149.

¹⁷ Claude Cahen, "L'évolution de l'iqṭā' du IXe au XIIIe siècle: contribution à une histoire comparée des sociétés médiévales," *Annales: Economies, Sociétés, Civilisations* 8 (1953), 42–4. Cf. the slightly different account in David Morgan, *Medieval Persia 1040–1797* (London: Longman, 1988), 38.

¹⁸ For the struggle between sultān and caliph in the Saljūq period, see George Makdisi, "Les rapports entre calife et sultān à l'époque saljūqide," *IJMES* 6 (1975), 228–36.

later there was a short-lived renaissance of the ‘Abbāsīd caliphate under the eccentric al-Nāṣir li-Dīn Allāh (r. 575/1180–622/1225).

With the death of Mas‘ūd in 547/1152, according to the chronicler Ibn al-Athīr, the fortunes of the Saljūq family went into steep decline.¹⁹ The last Saljūq sultān Ṭuġhril (III) b. Arslan, for a time master of Jibāl, was killed in battle by the Khwārazmshāh Tikish in 590/1194. In the course of the sixth/twelfth century, the great Turkish commanders set up their own dynasties, sometimes as *atabegs* and nominal vassals of the Saljūq sultān, sometimes as independent rulers. Zankī’s (d. 541/1146) emirate at Mosul is perhaps the most famous of these kingdoms; others came into being in Azerbaijan, Khuzistan, and Fars. The early Saljūqs’ attempt to create a centrally governed empire had finally collapsed. Nevertheless, they had set up structures of social organization that survived well into the period of localized military rule and, in fact, for a long time thereafter.

General conditions of punishment under the Saljūqs

How did the political developments described in this rough historical sketch influence the administration of justice and of punishment? As indicated, the second half of the Saljūq period was marked by the emergence of “a fluid set of purely military governments,”²⁰ the caliph having metamorphosed from the leader of Islamdom at large into just one among the local rulers. Government consisted primarily in the collection of taxes and military defense against outside forces. As for the administration of justice, the local rulers, caught perpetually in petty warfare, appear to have functioned only as a last resort. Except when considerations of state interest prompted the rulers to make a show of force, the civil leaders (*a’yān*) and religious scholars (*ulamā*) of the cities were left to lead their affairs with a certain degree of liberty. This liberty, however, came at the price of a militarized ruling class.²¹ In terms of the prosecution of crime and the administration of punishment, it can be argued that a militarized government always creates an environment of legal insecurity. As the sources suggest (see part I of this study), public punitive rituals, often unpredictable and excessive in their violence, were a constant spectre in the lives of ordinary men and women. Perhaps punishment by the state did not threaten the physical survival of the urban community as a whole – for most people who did not partake in the machinations of the ruling strata, the threat of state punishment was probably more often imaginary than real. However, as this study suggests, because of its eminently

¹⁹ ‘Izz al-Dīn Abū l-Ḥasan ‘Alī b. Abī l-Karam Ibn al-Athīr, *al-Kāmil fī l-tārīkh* (Beirut: Dār al-Kitāb al-‘Arabī, 1417/1997), IX, 186.

²⁰ Hodgson, *Venture*, II, 53.

²¹ Marshall Hodgson has characterized this divorce of powers as the “*a’yān–amīr* system” of the Islamic Middle Period. See his *Venture*, II, 65, 68.

public character, punishment may well have contributed to a general feeling of the impermanence and precariousness of life.

This feeling was reinforced by a number of additional factors of insecurity. First, once the Saljūq expansion had come to a halt, the groups of Ghuzz tribesmen roaming the countryside became an increasing hazard to public security. The problem was exacerbated by the continuing influx of Turkish tribesmen from Central Asia. These unruly elements threatened the safety of the roads and smaller urban settlements, as the repeated injunctions addressed to local governors to “protect the safety of the roads” in some late Saljūq diplomas of investiture suggest.²² Second, the nature of political rule, marked by shifting alliances between local rulers and complex patterns of territorial distribution, made efficient prosecution of crime difficult. Organized crime in the cities, especially in the latter half of the Saljūq period, seems to have increased. The gangs of urban militias, the so-called ‘*ayyārūn*, posed a strong challenge to government.²³ Third, the Saljūq period was a time of religious strife and persecution. This is most prominently illustrated by the Nizārī Ismā‘īlīs, the Assassins of Western lore. After seizing the fortress of Alamūt, in the Daylamī mountains north of Qazwīn in 483/1090, the Ismā‘īlīs of Persia and Iraq mounted a revolt against the Sunnī Saljūq rulers. Their method of operation was to target powerful individuals from among the ranks of the *amīrs* and government officials, including the sultān himself. However, fear of Ismā‘īlīs, or Bāṭinīs as they were commonly called, appears to have resonated not only with the Saljūq ruling class, but with large parts of the subject population as well. Thus it would appear, at least from the reports about a mass hysteria culminating in the public auto-da-fé of Ismā‘īlīs in Iṣfahān around the turn of the century, or about ignominious public executions of Ismā‘īlī leaders, which people reportedly attended by the thousands.²⁴

By meting out punishment against criminals, Bāṭinīs, and all sorts of offenders, the Saljūq régime both reinforced and reacted to the general feeling of insecurity. It is true that exemplary punishment may have reassured the populace that no crime would escape retribution. But the real purpose of punishment was, first and foremost, to demonstrate the absolute power of the

²² Mu‘ayyad al-Dawla Muntajib al-Dīn Badī‘ al-Juwaynī, ‘*Atabat al-kataba* (Tehran: Shirkat-i Sahāmī-yi Chāp, 1329 sh.[1950]), 19, 25, 28, 42, 79; Muḥammad b. ‘Abd al-Khālīq al-Mīhanī, *Dastūr-i dabīrī* (Ankara: Türk Tarih Kurumu Basımevi, 1962), 113–14. All translations are mine unless otherwise noted.

²³ See Abū l-Faraj ‘Abd al-Rahmān b. ‘Alī Ibn al-Jawzī, *al-Muntazam fī tārikh al-umam wa-l-mulūk* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1412/1992), XVII, 31, 310, 324, 327; Ibn al-Athīr, *Kāmil*, IX, 96, 128.

²⁴ Ibn al-Athīr, *Kāmil*, VIII, 544, 597; Muḥammad b. ‘Alī b. Sulaymān al-Rāwandī, *Rāḥat al-sudūr wa-āyāt al-surūr* (London: Luzac, 1921), 160; Ghiyāth al-Dīn b. Humām al-Dīn Khwāndamīr, *Ḥabīb al-siyar fī akhbār afrād bashar* ([Tehran]: Kitābforūshī-yi Khayyām, 1362/[1983]), I, 377. See also Hodgson, *The Order of the Assassins: The Struggle of the Early Nizārī Ismā‘īlīs Against the Islamic World* (The Hague: Mouton, 1955), 95–6.

ruler. Public punishment was a political ritual. According to Iranian kingship theory, the protection of the kingdom rested squarely on the shoulders of the prince. Therefore, any crime could be seen as a *lèse-majesté*, a personal attack on the prince's sovereignty. Public punishment, then, offered the opportunity to take revenge for this attack, "to make everyone aware, through the body of the criminal, of the unrestrained power the sovereign,"²⁵ and thus to reveal to the public the truth of the ruler's claim to legitimacy. After the demise of caliphal power, as has been noted by Roy Mottahedeh, the temporal rulers in Islam came under increasing pressure to demonstrate to their subjects and to themselves that they merited their authority.²⁶ Public spectacles of punishment served them well in satisfying this need. As Foucault concluded his analysis of the penal administration of the French *ancien régime*, "[t]he public execution did not re-establish justice; it reactivated power."²⁷

There was a certain ambiguity (also noted by Foucault), however, in the role played by the spectators of such public (re)enactments of power. On the one hand, the spectators were passive witnesses who were "struck with terror [*hishmatī sakht-i buzurg biyuftād*]" at the spectacle of executions and other punishments.²⁸ On the other hand, the spectators did not simply pay "scaffold service" to the ruler by showing up in great numbers to the penal ceremonies. At times they became active participants. During ignominious parades of criminals through a city, people insulted, spat at, or even attacked the condemned.²⁹ In the wake of public executions, corpses were sometimes maimed by an enraged mob.³⁰ However, this active role of the audience carried in itself the seed of resistance, since the refusal to assist, or even to attend, public spectacles of punishment could signify a measure of discontent with government.³¹ The chronicles record popular protests against excessive punishment

²⁵ Foucault, *Discipline and Punish*, 49. Cf. *ibid.*, 44.

²⁶ Roy Mottahedeh, "Some Attitudes Towards Monarchy and Absolutism in the Eastern Islamic World of the Eleventh and Twelfth Centuries AD," in Joel L. Kraemer and Ilai Alon (eds.), *Religion and Government in the World of Islam* (Tel Aviv: Tel Aviv University Publishing, 1983), 90.

²⁷ Foucault, *Discipline and Punish*, 49.

²⁸ Abū l-Faḍl Muḥammad b. Husaynal-Bayhaqī (d. 470/1077), the author of the *Tārīkh-i Bayhaqī* (Tehran: Dānīshgāh-i Tīhrān, 1332/[1953]), thus describes the effect on people of a mass execution under the Ghaznavids. See *LN*, s.v. *hishmat*. Cf. Abū Bakr Muḥammad b. Ja'far al-Narshakhī, *Tārīkh-i Bukhārā* (Tehran: Tūs, 1363 [1984]), 76: "He ordered the two to be put on the gibbet and the people of the city became afraid again."

²⁹ See the executions of Ibn al-'Aṭṭāsh (Ibn al-Athīr, *Kāmil*, VIII, 544), Ibn al-Muslima (Ibn al-Jawzī, *Muntaẓam*, XVI, 37–8), and Sayf al-Dīn Sūrī (Mīnhāj-i Sirāj al-Juzjānī, *Ṭabaqāt-i Nāṣirī*, tr. H. G. Raverty [1881, repr. Osnabrück; Biblio Verlag, 1991], 441–5), and other cases discussed in this study; cf. esp. pp. 80–1, 86, 173–4.

³⁰ Ibn al-Jawzī, *Muntaẓam*, XVII, 307 (the tax-collector Ibn al-Harūnī in 530/1135); *ibid.*, XVII, 328 (the *shihna* of Baghdad, for killing a young boy).

³¹ This is also noted by Foucault, *Discipline and Punish*, 61–3. The mob's acts of revenge against executed bodies of state officials could also express anger against the government, through the surrogate of a high official. See the case of the vizier Dargūzīnī discussed in this book, pp. 65–6.

only occasionally;³² this, however, could indicate the historians' bias in favor of the political authorities, rather than showing that people always acquiesced to excessive rituals of public punishment. If they acquiesced, they are likely to have done so out of fear of retribution. In sixth-/twelfth-century Baghdad, the authorities responded to sporadic revolts of the populace with merciless scorching of their residential quarters.³³

There were other venues in which the subjects of Saljūq rule could express discontent with the repressive nature of the political régime. For instance, descriptions of punishment in the next world offered a way of reflecting about, and in fact of criticizing, punishment in this world. Representations of eschatological punishment in many ways mirrored penal justice as dispensed by temporal rulers, thus carrying a message about the use of coercive force in this world. Another venue was that offered by the discourse of jurists. As this study argues, jurists tried to carve out a space of individual freedom from arbitrary punishment. This they did not so much by calling into question the *de facto* power of the temporal rulers, a battle they had, by the time of the Saljūqs, more or less forfeited. Rather, they stressed the concept of inviolability (*ḥurma*) of the private sphere, and of the human body in general.

These, then, are the three perspectives on punishment that this study proposes to investigate in more detail: first, the political use of punishment as a means of manifesting the power of the ruler and his delegates (part I); second, the eschatology of punishment in the hereafter as a reflection of punishment in this world (part II); third, the legal discourse on punishment (part III). My basic argument is that both eschatologists and jurists skillfully managed to mobilize Islamic cultural resources to create a space of individual liberty under a highly militarized and unstable political régime. In this space of freedom of thought, alternative visions of justice and just rule could flourish. To conclude this introduction, I shall briefly discuss the sources used in each part of this study. In broad strokes, I will also outline the central issues raised, and some of the conclusions reached, in each of the chapters.

³² A famous case is that of the vizier Ḥasanak under the Ghaznavids. See Bayhaqī, *Tārīkh-i Bayhaqī*, 166. For a case of refusal of the spectators to participate in stoning an adulterer, see Naṣīr al-Dīn b. Muḥammad Ibn Bibī, *Saljūqnāma* (tr. Herbert W. Duda, Copenhagen: Munksgaard, [1959]), 204–5. In general, however, very little is known of the reaction of the audience to public executions in the Saljūq period. As Robert Brunschvig writes, in nineteenth-century Tunis, “the masses attended the public executions eagerly, responding with *es-smāḥ* (you are forgiven) to the request of the condemned for pardon; great silence precedes and follows the fatal instant; people often throw stones at the executioners and try to seize pieces of the garment of the tortured as tokens of goodluck.” See Brunschvig, “Justice religieuse et justice laïque dans la Tunisie des Deys et des Beys jusq’au milieu du XIXe siècle,” *SI* 23 (1965), 64. Studies of the populace’s response to public punishment in late medieval and early modern Europe can rely on a plethora of court documents and chronicles. See, for example, Pieter Spierenburg, *The Spectacle of Suffering. Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984), 81–109.

³³ Ibn al-Athīr, *Kāmil*, VIII, 633; Ibn al-Jawzī, *Muntaẓam*, XVII, 296.

Part I: the politics of punishment

The first part of this study is devoted to the practice of punishment under the Saljūqs and to the discourse the Saljūq ruling establishment used to justify penal repression, vis-à-vis both themselves and the general public. I discuss spheres and institutions of punishment (chapter 1), as well as types of punishment (chapter 2): executions, corporal punishments, shaming, exile, and imprisonment. A systematic overview of the practice of punishment in medieval Islam, to the best of my knowledge, is hitherto unavailable in the secondary literature.³⁴ Therefore, much of my work has consisted in clarifying the terminology and typology of punishment. In this effort, I have relied primarily on Saljūq historiography. The thorny question as to whether the chronicles carry their own normative agenda, and therefore must not be taken to refer to historical “reality,” is of some concern in this context. Marylin Waldmann has criticized traditional scholarship in Islamic history for using historical narratives “almost exclusively as unstructured, uninterpretive mines of factual information”³⁵ rather than recognizing that history writing is an interpretive act marked by strong ideological underpinnings. While I do presuppose a measure of honesty and factual reliability of the historians, I should like to put forth two considerations in answer to Waldmann’s charge. First, I do not think that the search for factuality precludes a concern for interpretive issues. Whenever it has seemed both possible and desirable, I have examined the social and political context in which the historians wrote. I have sought to elucidate some of the didactic or ideological aims the historians may have pursued.³⁶ Second, when one compares different historical narratives, certain patterns of practice emerge that are, at least to my mind, unlikely to be the result of deliberate fabrication. Even if the factual details of historical events cannot always be known with absolute certainty, these patterns of action can with reasonable confidence be taken to refer to actual historical practice. It is with types of social actions that this study is

³⁴ The closest one can get in this regard seems to be Berthold Spuler’s *Iran in frühislamischer Zeit* (Wiesbaden: Franz Steiner, 1952), 371–7. However, Spuler provides almost no historical or social context for these cases of punishment, which he selects at random from about five hundred years of history writing. In general he contents himself with mocking comments about the crudity of the “orientals” (*Morgenländer*) in penal matters. ‘Abbūd al-Shālji’s *Mawsū‘at al-‘adhāb* (Beirut: al-Dār al-‘Arabīyya li-l-Mawsū‘āt, 1980) is a useful encyclopaedia of punitive practice in premodern Islam, which, however, is less exhaustive with regard to the Saljūq period.

³⁵ Marylin Robinson Waldmann, *Toward a Theory of Historical Narrative: A Case Study in Perso-Islamicate Historiography* (Columbus: Ohio State University Press, 1980), 3.

³⁶ See the examples set by Julie Scott Meisami, “Exemplary Lives, Exemplary Deaths: The Execution of Hasanak,” in Concepción Vázquez de Benito and Miguel Angel Manzano Rodríguez (eds.), *Actas, XVI Congreso UEAI* (Salamanca: Agencia Española de Cooperación Internacional, 1995), 357–64; Bert Fragner, “Wem gehört die Stadt? Raumkonzepte in einer Chronik der Seldschukenzeit,” in Roxane Haag-Higuchi and Christian Szyska (eds.), *Erzählter Raum in Literaturen der islamischen Welt* (Wiesbaden: Harrassowitz, 2001), 95–108.

primarily concerned, not with the question of the facticity of historical particulars.³⁷

It is striking that all kinds of punishments of all kinds of people are mentioned with great frequency in the historiography of the Saljūq period; in fact punishment is part of the stock repertoire of the chroniclers. The Ḥanbalī preacher, jurist, and historian Ibn al-Jawzī (d. 597/1200) may serve as an example here.³⁸ This author represents, in the words of Rosenthal, “the lowest level to which Muslim historiography, in its main representatives, ever sank.”³⁹ As Rosenthal argues, one reason for this is that Ibn al-Jawzī devoted a lot of space to “insignificant events, such as extraordinary natural phenomena.”⁴⁰ It is true that Ibn al-Jawzī focuses on local events in Baghdad, and treats global history in rather summary and superficial fashion. But his interest in “extraordinary phenomena” may also account for his intense preoccupation with the issue of punishment, and may therefore prove important for the purposes of this study. In its chronological (rather than prosopographical) parts, Ibn al-Jawzī’s chronicle deals with three main categories of newsworthy items: (1) the changing fortunes of the reigning military aristocracy, that is, the battles and diplomatic relations among the Saljūq princes as well as those involving the caliph and other local rulers of the time – here there are many references to members of the ruling classes who incur punishment, such as viziers fallen from grace, treacherous *amīrs*, and tyrannical military governors (*shihnas*); (2) events concerning the civilian élite of Baghdad of whom Ibn al-Jawzī himself was a member; Ibn al-Jawzī devotes considerable space to ceremonies of investiture (*khalʿ*) of fellow scholars, and to the appointments of *madrassa* directors and teachers as well as of viziers, judges, chamberlains (*ḥājibs*), and market-inspectors (*muḥtasibs*); in this second category one also comes across cases of punishment, when scholars or other officials are involved; (3) miscellaneous events such as the inflation and deflation of prices, the introduction and abolishment of taxes, portentous natural phenomena, fires, famines and diseases, and curiosities such as roosters laying eggs; it is in this last category that Ibn al-Jawzī mentions the crimes and punishments of the lower strata of society (*ʿamma*). About Ibn al-Jawzī’s

³⁷ In general, I agree with Chase Robinson that Western scholars should avoid both “intemperate censure . . . [and] uncritical acclaim” of Islamic historians. See Chase F. Robinson, *Islamic Historiography* (Cambridge: Cambridge University Press, 2003), 143. On the question of Islamic historians’ attitude toward truth, see *ibid.*, 143–55.

³⁸ On Ibn al-Jawzī’s career, see Leder, *Ibn al-Gawzī und seine Kompilation wider die Leidenschaft: der Traditionist in gelehrter Überlieferung und originärer Lehre* (Beirut: Franz Steiner, 1984), esp. 13–42. On Ibn al-Jawzī as historian, see Franz Rosenthal, *A History of Muslim Historiography* (1952, Leiden: Brill, 1968), 143–4; Cahen, “The Historiography of the Seljuq Period,” 62–3.

³⁹ Rosenthal, *A History of Muslim Historiography*, 143. Cf. Cahen, “The Historiography of the Seljuq Period,” 63.

⁴⁰ Rosenthal, *A History of Muslim Historiography*, 144.

pious outlook on life there can be no doubt, and interpretation of his work should take this into account.⁴¹

Other Arabic chronicles mention punishments with great frequency, too, but all in all are less concerned with the details of penal prosecution.⁴² As for Saljūq chronicles composed in Persian, the *Rāḥat al-suḍūr* of Rāwandī (written at the beginning of the seventh/thirteenth c.) stands out.⁴³ Rāwandī tends to intersperse his history with literary quotations, especially poems and proverbs, which makes his work somewhat akin to the didactic genre of mirrors for princes. For example, Rāwandī comments on the revolt and execution of sultān Sanjar's former intimate and governor of Balkh, 'Alī Chatrī, by adducing an Arabic proverb (*mathal*) castigating Chatrī's rebellion ("Stupidity will make you stumble, and rebellion will ruin you [*al-jahlu yuzillu l-qadam wa-l-baghyu yuzūlu l-ni'am*]"); he then proceeds to quote a poem from Firdawsī's *Shāhnāma* comparing the ruler to the sun on the horizon, which can sting like a sword but is also kind to mankind (*bi-yak dast shamshūr u-yak dast mihr*).⁴⁴ Rāwandī's treatment of this incident has a double purpose. It pays lip service to his patron's authority to punish, but it also reminds the ruler that forgiveness is a virtue. In sum, as with Ibn al-Jawzī, the reader must be aware of possible normative agendas in Rāwandī's work.

Another problem related to the use of chronicles is what can be called the historians' disdain for the ordinary. Much of the daily practice of punishment is simply not mentioned in the sources. As Hallaq has noted in respect to an earlier period, "historians were not interested in recording the day-to-day routine of the judiciary, and if we know something about this routine, it is because it often creeps into those relatively few accounts of an unusual

⁴¹ See my analysis of the passage in Ibn al-Jawzī, *Muntaẓam*, XVII, 310, on pp. 146–7.

⁴² In addition to Ibn al-Jawzī, I have mostly relied on the chronicles of Ḥusaynī (fl. 575/1180–620/1225), Ibn al-Athīr (d. 630/1233), and Bundārī (d. 643/1245–6).

⁴³ Except in its latter parts, Rāwandī's chronicle relies heavily on the *Saljūqnāma* of Zāhīr al-Dīn Nishāpūrī (written around 585/1190, Tehran: Chāpkhāna-yi Khāwur, 1332 sh./[1953–4]). See Cahen, "The Historiography of the Seljūq Period," 73. The identification of the text edited by Ismā'īl Afshār with the *Saljūqnāma* of Nishāpūrī is, however, contested. See C. E. Bosworth's preface to K. A. Luther's translation of the Saljūq chapters in Faḍl Allāh Rashīd al-Dīn Ṭabīb's *Jāmi' al-tawārīkh* (Richmond: Curzon Press, 2001), viii–x. Recently, A. H. Morton has edited a unique manuscript in the Library of the Royal Asiatic Society (London: E. J. W. Gibb Memorial Trust, 2004) which he believes represents Nishāpūrī's original text. With regard to Persian chronicles, mention should also be made of a number of local histories, such as Abū l-Ḥasan 'Alī b. Zayd Ibn Funduq's (d. 565/1169) history of the district of Bayhaq (*Tārīkh-i Bayhaq*, ed. Aḥmad Bahmanyār, Tehran: Kitābfurūshī-yi Furūghī, [196–]); Ibn al-Balkhī's (fl. beg. sixth/twelfth c.), *Fārsnāma* (London: Luzac, 1921); the sixth-/twelfth-century anonymous *Tārīkh-i Sīstān* (Tehran: Nashr-i Markaz, 1373/1994); and Afḍal al-Dīn Aḥmad b. Hamīd al-Kirmānī's *'Iqd al-ūlā fi mawqif al-a'lā* (Tehran: Rūzbahān, [1977]), a history of the Saljūqs of Kirmān. All these sources, as well as biographical dictionaries, have been used occasionally in the present study. For a basic overview of Saljūq history, see Affan Seljuq, "Saljūqid Period and the Persian Historiography," *Islamic Culture* 51, 1 (1977), 171–85.

⁴⁴ Rāwandī, *Rāḥat al-suḍūr*, 176.

nature.”⁴⁵ This statement also holds true for the Saljūq period. The frequency with which punishments are mentioned stands in some contrast to the degree of precision with which these punishments are described. One thus finds, in many instances, the laconic notice of a sultān, vizier, or *amīr* whose order of execution was carried out (*amara fa-qutila*), but one is left without any clue as to how or by whom this was done.

Therefore, in order to supplement the information that can be gleaned from the historical sources, the first part of this study also makes use of a variety of other genres of literature. These include mirrors for princes, administrative handbooks, diplomas of investiture, dictionaries, literary prose, and poetry.⁴⁶ In addition to giving valuable clues as to the functioning of the Saljūq penal administration, these sources reflect the Sunnī ruling classes’ concern with buttressing their use of coercive force with a cogent strategy of justification. This they achieved by declaring punishment, even in its most excessive forms, to be an essential ingredient of just government. According to them, punishment by the repressive state apparatus served to preserve the awe (*hayba*) that the ruler required to keep his domain pacified. This notion is encapsulated by the term *siyāsa* (Pers. *siyāsat*) which has the double meaning of “governance” and “punishment.” The ideology of *siyāsa* both justified and in turn was supported by public acts of punishment. For the Saljūq state, punishment was an act of propaganda that served a specific political tactic.⁴⁷

⁴⁵ Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 190.

⁴⁶ Collections of investiture diplomas of offices such as that of judge (*qādī*), market-inspector (*muhtasib*), police-prefect (*shihna*), or village chief (*raʿīs*) include Juwaynī (fl. between 528/1134 and 548/1153), *ʿAtabat al-kataba*; Mīhanī (575/1180), *Dastūr-i dabīrī*; Rashīd al-Dīn Muḥammad b. Muḥammad b. ʿAbd al-Jalīl al-ʿumarī Waṭwāt (578/1182), *Majmūʿat al-rasāʾil* ([Cairo]: Maktabat al-ʿAdāb, 1939); Bahāʾ al-Dīn Muḥammad b. Muʿayyad al-Baghdādī (fl. sixth/twelfth c.), *al-Tawaṣṣul ilā l-tarassul: inshāʾ wa-talʿif* (Tehran: Shirkat-i Sahāmī, 1315/[1937]); and Ḥasan ʿAbd al-Muʾmin al-Khūyī (fl. late seventh/thirteenth c.), *Rusūm al-rasāʾil wa-nujūm al-faḍāʾil* (Ankara: Türk Tarih Kurumu Basımevi, 1963). The *ʿAtabat al-kataba*, a manual composed in the chancery (*diwān al-inshāʾ*) of sultān Sanjar, offers especially valuable insights. For mirrors for princes and poetry, see the references given in the text. Needless to say, these genres must all be read with a critical awareness of interpretive issues. For example, the content of mirrors for princes, though generally concerned with the practice of government, is often prescriptive rather than descriptive. See Ann K. S. Lambton’s comment on Nizām al-Mulk’s *Siyāsāt-nāma*: “His purpose was not to justify existing conditions but to reform the sultan’s conduct of government so that his rule might be effective. His terms of reference are thus strictly limited.” See Lambton, “The Dilemma of Government in Islamic Persia: The *Siyāsāt-nāma* of Nizām al-Mulk,” *Iran* 22 (1984), 56. Similarly see Stefan Leder, “Aspekte arabischer und persischer Fürstenspiegel,” in Walter Beltz and Sebastian Günther (eds.), *Erlesenes: Sonderheft der Halleschen Beiträge zur Orientwissenschaft anlässlich des 19. Kongresses der Union Européenne d’Arabisants et Islamisants* (Halle: Martin-Luther-Universität, 1998), 124.

⁴⁷ For a discussion of public punishment as a political tactic in early modern Europe, see Foucault, *Discipline and Punish*, 23. Louis Althusser has been influential in distinguishing “repressive State Apparatuses,” including government, courts, police forces, prisons, etc., and “coercive Ideological State Apparatuses,” including a variety of social institutions in the field of education and the production of knowledge. See his “Ideology and Ideological State Apparatuses (Notes Toward an Investigation),” in Slavoj Žižek (ed.), *Mapping Ideology*

Part II: the eschatology of punishment

While part I of this study looks at punishment from the perspective of the Sunnī state, part II examines descriptions of punishment in the Muslim hell. At first sight, the relationship between state punishment in this world and divine retribution in the next may seem a stretch. Upon closer analysis, however, one finds many aspects in the medieval Muslim *imaginaire* of hell that indicate a close conceptual link between the this-worldly and the other-worldly sphere. Eschatology is taken here as a literary genre that is addressed primarily to a popular audience.⁴⁸ As I suggest, the minute details of punishment in the hereafter reflect not just a taste for the bizarre on the part of the eschatologists. Rather, medieval Muslim representations of hell offered a powerful discourse that helped the underprivileged come to grips with the reality of punishment and suffering in *this* world. The imagery of hell analyzed in this study no doubt constitutes what Robert Orsi has characterized as a “despised religious idiom” – that is, despised by those modern interpreters who can see in it nothing but the dark, chaotic, sometimes even repulsive, side of the religious imagination. With Orsi, however, I would like to take these representations seriously, by studying them in terms of how they matter to ordinary humans.⁴⁹

Sources for the Muslim hell used in this study include the Qurʾān and the exegetical literature (*tafsīr*), *ḥadīth* collections, especially eschatological manuals such as those of Ibn Abī l-Dunyā (d. 281/894), Ghazālī, and Qurṭubī (d. 671/1272), and reports about the Prophet’s night journey (*isrāʾ*). The net I cast is wide. I have drawn in additional material from before and after the Saljūq period in order to arrive at a comprehensive view of hell, a view which is evidenced not only, but also, in the Saljūq period. I am aware, however, that

(London: Verso, 1994), 100–40. The two elements of his distinction, however, should not be studied separately. For an attempt to pay attention to both aspects of state repression in the medieval Islamic context, see ch. 1 of this study.

⁴⁸ I follow Boaz Shoshan’s suggestion that, despite the difficulty of matching specific cultural phenomena to precisely defined socioeconomic groups, a medieval Islamic “popular” cultural stratum, embodied in “genres of ‘texts,’ both written and non-written,” can be meaningfully reconstructed. See his *Popular Culture in Medieval Cairo* (New York: Cambridge University Press, 1993), 7. See also the illuminating discussion in Jonathan Berkey, *Popular Preaching and Religious Authority in the Medieval Islamic Near East* (Seattle: University of Washington Press, 2001), 9–12. Eschatology, it seems to me, is one of the few available windows into how members of the lower strata of Islamic medieval society expressed their feelings and thoughts. See my discussion of this issue on pp. 150–1, 162, 146–7. Thus, I hope to reach beyond the limitations expressed by Lambton, “Changing Concepts of Justice and Injustice from the 5th/11th Century to the 8th/14th Century in Persia: The Saljuq Empire and the Ilkhanate,” *SJ* 68 (1988), 28: “[O]f the views of the common people almost nothing is recorded. There are references in chronicles and histories to the hardships suffered by the common people on account of outbreaks of plague and other natural calamities, and because of the tyranny of rulers . . . but there is little to indicate the personal reactions of the common people to these events.”

⁴⁹ Robert Orsi, “Jesus Held Him So Close in His Love for Him that He Left the Marks of His Passion on His Body,” in Orsi, *Between Heaven and Earth: The Religious Worlds People Make and the Scholars Who Study Them* (Princeton: Princeton University Press, 2005), 7.

the temporal and spatial distance of some of the sources to fifth-/eleventh- and sixth-/twelfth-century Persia and Iraq poses certain methodological challenges. Let me offer possible avenues for thinking about these challenges.

As for temporal distance, it is known, for example, that the writings of Ibn Abī l-Dunyā continued to circulate in great numbers well into the sixth/twelfth century and beyond. Sibṭ b. al-Jawzī (d. 654/1256) claimed he was familiar with more than 130 of Abī l-Dunyā's works.⁵⁰ Since the number of eschatological traditions seems to have increased over the centuries, rather than decreased, and since these traditions were not subjected to the same close criticism as, say, legal *ḥadīths*, it would appear reasonable to conclude that much of the information in earlier sources continued to be known in Saljūq times. I read *ḥadīth* traditions in much the same way as they would have appeared to a Saljūq contemporary, looking backwards, as it were, to the time of the Prophet.⁵¹ As for sources written after the Saljūq period (of which I have used only a few, and only in order to supplement earlier works), there is always the possibility that the material they present circulated earlier.

Why, however, should an eschatological manual such as that of Qurṭubī, who lived in Muslim Spain for most of his life, be used for a study of eschatological thought under the Saljūqs? One answer to this question is that scholars of the period traveled extensively, so that religious knowledge went back and forth with relative ease between east and west. One of Qurṭubī's teachers in *ḥadīth*, Abū l-'Abbās Aḥmad al-Qurṭubī (d. 656/1259), is known to have visited Egypt and Iraq, where his work was held in high esteem; the Syrian Nawawī (d. 676/1277) quotes his writings in a number of places.⁵² Qurṭubī himself did not die in al-Andalus, but in Egypt.⁵³ Through their travels, scholars like the two Qurṭubīs helped to create an international Islamic textual community whose members "were engaged in what they perceived as an ongoing dialogue across space and

⁵⁰ *EI2*, s.v. Ibn Abī l-Dunyā, III, 684a–b (A. Dietrich). A. Wiener, "The Farāğ ba'da aš-Šidda-Literatur," *Der Islam* 4 (1913), 413–9, gives a list of Ibn Abī l-Dunyā's works which contains at least fourteen works concerning death and afterlife. See also Leah Kinberg, "Interaction Between This World and the Afterworld in Early Islamic Tradition," *Oriens* 29–30 (1986), 289, who comments that Ghazālī (d. 505/1111), Ibn Qayyim al-Jawziyya (d. 751/1350), and Suyūṭī (d. 911/1505) used Ibn Abī l-Dunyā's works extensively.

⁵¹ See Jacques LeGoff's argument against reducing cultural phenomena to their origins: "A tradition exists; it is not created." See LeGoff, *The Medieval Imagination* (1985, Chicago: University of Chicago Press, 1988), 28. My approach could therefore be called "reception-oriented," a trend in scholarship that, in Islamic studies, is perhaps best represented by Uri Rubin, *The Eye of the Beholder: The Life of Muḥammad as Viewed by the Early Muslims* (Princeton: Darwin Press, 1995), who studies traditions about the Prophet Muhammad not in terms of their factual authenticity but of the hermeneutics of the medieval scholars who wrote about the Prophet. Cf. the useful discussion in Brooke Olson Vuckovic, *Heavenly Journeys, Earthly Concerns* (New York: Routledge, 2005), 9–13.

⁵² *EI2*, s.v. al-Qurṭubī, V, 509b (R. Arnaldez).

⁵³ Miguel Asín Palacios, *La escatología musulmana en la Divina Comedia* (1919, repr. Madrid: Hiperión, 1984), 141, states that Qurṭubī's *Tadhkirā*, one of Asín's main sources, was "known in Orient and Occident."

time.”⁵⁴ Thus, there appears to be, despite temporal and spatial distances, a reasonable amount of coherence in the (Sunni) Muslim eschatological tradition. It must be admitted, however, that the second part of this study is the one that is least focused on the Saljūq context. In fact, it is my expressed goal in this section to raise theoretical issues that reach beyond this historical period and speak to interpretive issues relevant for the study of Islamic eschatology and of the history of religion in general.

Chapter 3 opens with a discussion of the notion that mainstream Sunnī Islam has always rejoiced in a great certainty of salvation, despite the prospect of temporary punishment in hell of the grave sinners (*ahl al-kabā'ir*).⁵⁵ As I argue, the long lists of grave sins in the *ḥadīth* corpus and the myriad punishments specified in the eschatological tradition speak a radically different language. What is more, there is little in eschatological descriptions of hell that indicates that Muslim sinners are punished only temporarily. Punishment of Muslims in hell, I submit, was a much-feared and much thought-about prospect, at least on the level of the popular *imaginaire*.

In the remainder of the chapter, as well as in the next, I discuss a variety of possible functions that the eschatological idiom could fulfill. Since to the best of my knowledge the Muslim imagery of hell has never been analyzed with a satisfying degree of detail,⁵⁶ I provide a full description of hell's topography and of the creatures that inhabit it. While discussing various aspects of the Muslim imagery of hell, I develop a fourfold interpretive model of analysis, examining the ascetic-psychological, structuralist, moral-didactic, and performative dimensions of Muslim traditions about punishment in the hereafter. The overarching concern of this part of my study is to show the close temporal, spatial, and conceptual contiguity of hell and earth. Not only were the torments

⁵⁴ Eli Alshech, “‘Do Not Enter Houses Other Than Your Own’: The Evolution of the Notion of a Private Domestic Sphere in Early Sunnī Islamic Thought,” *ILS* 11, 3 (2004), 293. Berkey, *Popular Preaching*, 16–17, also argues along these lines. Cf. Daphna Ephrat, *A Learned Society in a Period of Transition: The Sunnī ‘Ulamā’ of Eleventh-Century Baghdad* (Albany: SUNY Press, 2000), 66, for a somewhat more skeptical view.

⁵⁵ See, for example, Ignaz Goldziher, *Die Richtungen der islamischen Koranauslegung* (Leiden: Brill, 1920), 155–69. Goldziher states that the position of Islamic orthodoxy on this point is “pure optimism [der reine Optimismus]”: 160.

⁵⁶ Souhbi el-Saleh's *La vie future selon le Coran* (Paris: J. Vrin, 1971), like Jonas Meyer's doctoral dissertation “Die Hölle im Islam” (Ph.D. dissertation, University of Basel, 1901), is little more than a paraphrase of some of the traditional Islamic literature on the subject. See my discussion of the Western secondary literature on the Muslim hell on pp. 114–17. The study of hell as part of social and cultural history has fared better in cognate disciplines such as the history of medieval Christianity (Jacques LeGoff, *The Birth of Purgatory*, 1981, Chicago: University of Chicago Press, 1984) or Chinese Buddhism (Stephen Teiser, *The Scripture on the Ten Kings and the Making of Purgatory in Medieval Chinese Buddhism*, Honolulu: University of Hawaii Press, 1994). I owe the last reference to George Keyworth. Late into the research for this study I have come across ‘Umar Sulaymān al-Ashqar's *al-Yawm al-ākhir* (2nd ed., Kuwait: Maktabat al-Falāḥ, 1988), an encyclopaedic *musnad* of Islamic eschatology, the third part of which has been translated into English as *The Final Day, Part Three: Paradise and Hell* (tr. Nasiruddin al-Khattab, Riyadh: International Islamic Publishing House, 1998).

of the inhabitants of hell modeled after this-worldly realities, but often it seems that the punishments that were enacted in Saljūq society acquired their specific meaning against the background of descriptions of punishment in the hereafter. When Ismāʿīlīs were burned at Iṣfahān in 494/1101, the man who was put in charge of the burning pits was called Mālik by the people, in reference to the chief guardian-angel in hell.⁵⁷ Ibn al-Jawzī, in his reports about public executions, frequently uses eschatological language, and one wonders whether this chronicler's interest in public punishment, especially if it was cruel or spectacular, follows a logic of correlating this-worldly events with other-worldly prospects.⁵⁸ Finally, one of the most commonly practiced public punishments under the Saljūqs, ignominious parade through the city (*tashhīr*), can be interpreted as an eschatological drama, complete with blackened faces and other signs of disgrace and punishment in hell.⁵⁹

To prove such transfers from the realm of ideas to that of actual social practice (and vice versa) is of course very difficult, or even impossible. If nothing else, however, medieval Muslim eschatology is noteworthy for the intimate connection it establishes between life on earth and in hell. As this study argues, hell played an important role in society, fulfilling a variety of functions. Eschatological traditions offered a discourse which helped the oppressed to assuage their fears and sufferings, but which could also empower people by expressing resistance against the social status quo.

Part III: legal dimensions of punishment

As the chronicles of the Saljūq period suggest, punishment was seldom informed by *shariʿa* precepts. For the Islamic legal historian, however, this is only one among many other aspects in the history of punishment that deserve notice. The Western study of punishment in premodern Islam has traditionally stopped at this point, claiming that the theoretical legal discourse had very little, if anything, to do with penal practice. This truism is problematic for at least two reasons. First, as parts I and II of this study show, the fact that criminal justice was divorced from the law does not mean that punitive practices were insignificant in the broader cultural context. Second, as part III of this study seeks to demonstrate, the jurists of Islam did in fact discuss, albeit in oblique ways, issues of punishment in a way that was relevant to practice.

⁵⁷ Ibn al-Athīr, *Kāmil* (ed. Tornberg), X, 315, quoted in *MA*, VI, 194.

⁵⁸ Ibn al-Jawzī, *Muntaẓam*, XVII, 310. Also, when Ibn al-Jawzī records tremblings of the earth, hot winds, and dust rising from the surface of the earth, he is using eschatological language. This seems akin to the notion preserved Ibn al-Jawzī's *Dhamm al-hawā* (Beirut: Dār al-Turāth al-ʿArabī, 1418/1998), 204, namely, that chaos and decay in this world are the result of moral corruption.

⁵⁹ See my analysis of the *tashhīr* punishment on pp. 168–75.

For the student of Islamic law in the Saljūq period there is a rich body of literature from which to choose. According to a common periodization,⁶⁰ it was under the Saljūqs (c. fifth/eleventh and sixth/twelfth c.) that Islamic law flourished in its “classical age.” The work of the Transoxanian Ḥanafī jurist Marghīnānī (d. 593/1197), in which the arrangement of chapters and the scope of legal reasoning reached a certain canonical form, is regarded as either the last representative of the “classical” or the first of the “postclassical” period.

Part III of this study relies primarily on the Ḥanafī and Shāfi‘ī literature of the period. In Saljūq Iraq and Persia, especially in the latter,⁶¹ these were the two dominant schools of law. They competed for local primacy in the urban centers of Khurāsān, often to the point of provoking riots. While the early Saljūq sultāns made it a deliberate policy to appoint Ḥanafī judges and preachers, the vizier Niẓām al-Mulk attempted gradually to redress the balance somewhat in favor of the Shāfi‘īs.⁶² The situation, however, remained tense. Scholars who converted from one school to the other exposed themselves to a lot of trouble. Thus, when Abū l-Muẓaffar al-Sam‘ānī (d. 489/1096) became a Shāfi‘ite in 468/1075–6, after having studied Ḥanafī law both in Marv and in Baghdad, this almost caused a public riot (*fitna*) in Marv, the city of his birth. Apparently, the Ḥanafī scholarly establishment, among them Abū l-Muẓaffar’s brother Abū l-Qāsim ‘Alī, felt that their position as the most influential school of law in town was under threat.⁶³ As a result, Abū l-Muẓaffar had to leave Marv. However, he returned not long after to reconcile himself with the Ḥanafīs, became a professor (*mudarris*) at the (Shāfi‘ī) Niẓāmiyya *madrasa*, and even taught his brother’s (Ḥanafī) son.⁶⁴

The same Abū l-Muẓaffar al-Sam‘ānī is one of the prime witnesses for the Ḥanafī–Shāfi‘ī debate that is at the center of chapter 5. This is the question in Islamic legal theory (*uṣūl al-fiqh*) as to whether analogical reasoning (*qiyās*)

⁶⁰ Chafik Chehata, *Études de droit musulman* (Paris: Presses Universitaires de France, 1971–), I, 20–7; Ya’kov Meron, “The Development of Legal Thought in the Ḥanafī Texts,” *SI* 30 (1969), 73–118, esp. 92–5. See also Meron, “Research Note: Marghīnānī, His Method and His Legacy,” *ILS* 9, 3 (2002), 410–16; Baber Johansen, “Eigentum, Familie und Obrigkeit im hanafitischen Strafrecht,” *Die Welt des Islams* 19 (1979), 4.

⁶¹ Ḥanbalism flourished in the first half of the sixth/twelfth century at Baghdad under such figures as Ibn ‘Aqīl (d. 513/1119). See George Makdisi, “Muslim Institutions of Learning in Eleventh-Century Baghdad,” *BSOAS* 24 (1961), 26–9, for the foundation of Ḥanbalī *madrasas* in this period.

⁶² Cf. R. W. Bulliet, “The Political-Religious History of Nishapur in the Eleventh Century,” in D. S. Richards (ed.), *Islamic Civilisation 950–1150* (Oxford: Cassirer, 1973), 85–8.

⁶³ Heinz Halm, *Die Ausbreitung der šāfi‘itischen Rechtsschule von den Anfängen bis zum 8./14. Jahrhundert* (Wiesbaden: Reichert, 1974), 85–7, has conveniently collected the information on Abū l-Muẓaffar’s biography. See also Muḥammad Ḥasan Haytū’s introduction to his edition of the *muqaddima* of Abū l-Muẓaffar al-Sam‘ānī’s *Qawāṭi’ al-adilla* (Beirut: Mu’assasat al-Risāla, 1417/1996), 11–15. Sam‘ānī also wrote, among other works, a Qur’ān commentary which is used in part II of this study. Abū l-Muẓaffar is not the only famous case of conversion from Ḥanafism to Shāfi‘ism in the period. Abū Ishāq al-Shīrāzī was also a Ḥanafī at first, and even taught Abū l-Muẓaffar at Baghdad. See Halm, *Ausbreitung*, 86.

⁶⁴ Halm, *Ausbreitung*, 86.

should be used to expand the scope of the divinely ordained punishments (*ḥudūd*, sing. *ḥadd*).⁶⁵ By and large, the Shāfi‘īs saw no harm in it; the Ḥanafīs, on the other hand, rejected the notion. While the Ḥanafī position thus may have restricted the use of state punishment, there remains the question whether they accepted other ways of extending *ḥadd* norms. For example, this could have been accomplished by arguing that certain offenses were not overtly stated, but linguistically implied in the *ḥadd* ordinances. In the remainder of chapter 5, I trace a debate in Ḥanafī substantive law (*furū‘ al-fiqh*) that dwells precisely on this issue. Some among the Ḥanafīs argued that, even though analogy from fornication (*zinā*) to sodomy (*liwāṭ*) was disallowed in criminal law, the “meaning” or “function” (*ma‘nā*) of sodomy was implied by that of fornication; therefore, they concluded, sodomites had to be punished in the same way as fornicators. The majority, however, disagreed, insisting on the fundamental semantic difference between *zinā* and *liwāṭ*. In tracing this Ḥanafī debate, I have drawn from a broad range of authors in a variety of genres.⁶⁶

In chapter 6, I turn to the issue of discretionary punishment (*ta‘zīr*). For this I use not only the Ḥanafī and Shāfi‘ī but also some of the Ḥanbalī and Mālīkī literature on the subject (again, with the exception of Shī‘ī sources). Discretionary punishment is a residual category in Islamic penal law and practice which, by the time of Saljūqs, had become the ruling authorities’ *passé-partout* for inflicting punishment, not according to the revealed law (*sharī‘a*), but according to *raison d’état*. I suggest that the jurists of all schools sought to rein in arbitrary uses of punitive authority by arguing that only offenses committed in public were subject to discretionary punishment. Thereby, they achieved two things: first, they offered a measure of protection against the state’s intrusion into the private sphere; second, they helped to propagate what could be termed the Islamic ethos of anti-exhibitionism. The importance of the concept of publicness in criminal law is shown by the penalty of shaming (*tashhūr*), a discretionary punishment that, at least according to the chronicles, occupied a central place in the administration of punitive justice under the Saljūqs. *Tashhūr* (lit. “to make someone public”) is a neglected phenomenon in the study of Islamic criminal law history. The issue of shame is a recurrent motif in all six chapters of this study. It appears apt, therefore, to end this study with a discussion of shaming in the

⁶⁵ For my presentation of this debate, I have used the works in legal methodology (*uṣūl al-fiqh*) of Baṣrī (d. 436/1044), Pazdawī (d. 482/1089), and Sarakhsī (d. 483/1090), and contrasted them with the Shāfi‘ī treatises of Shīrāzī (d. 476/1083), Sam‘ānī, Ghazālī (d. 505/1111), and Āmidī (d. 631/1233), among others.

⁶⁶ I have consulted the *furū‘* works of Sarakhsī (d. 483/1090), Samarqandī (d. 539/1144), Kāsānī (d. 587/1191), and Marghinānī, but also the proto-collections of legal opinions (*fatāwā*) by Sughdī (d. 461/1069), Burhān al-Dīn Ibn Māza (d. about 570/1174), Qāḍīkhān (d. 592/1196), and Sirāj al-Dīn ‘Alī b. ‘Uthmān Ūshī al-Farghānī (fl. end of the sixth/twelfth c.). Since many points of argumentation are preserved in later works, I have also incorporated “postclassical” Ḥanafī jurists such as Zayla‘ī (d. 743/1342), Ibn Humām (d. 861/1457), Ibn Nujaym (d. 970/1563), Ḥaskafī (d. 1088/1677), or Ibn ‘Abidīn (d. 1252/1836).

legal literature, and to reflect on the place of this punishment in the broader cultural context of medieval Islam. In the conclusion, I review the most important findings of this study and attempt to formulate a number of synthetic and comparative thoughts on the role of punishment in the development of Islamic civilization. It is my hope that the following pages will not be received as a punishing but rather as a rewarding experience by the reader.

PART I

The politics of punishment

Spheres and institutions of punishment

Private punishments

Punishment is a broad concept that refers to a variety of social practices. One way to break down the complexity of this category is to distinguish between different spatial settings, or spheres, of punishment. The Saljūq state punished in three such spheres. The first sphere in which punishment was enacted was that of the ruler's private habitat, that is, the court and inside the palaces. Second, there was the semi-private, semi-official setting of the ruler's criminal and military tribunals. Finally, a third sphere of punishment constituted the public arena of the city.

A great number of cases are recorded in chronicles of the Saljūq period in which the ruler or his representative put to death other members of the ruling classes within the inner confines of the palace. Take the example of 'Amīd al-Dawla Muḥammad b. Jahīr, vizier to the caliph Mustazhir (r. 487/1094–512/1118).¹ During his career, 'Amīd al-Dawla had been a highly esteemed government official.² However, he had become an archenemy of Abū l-Maḥāsīn, the vizier of the Saljūq sultān Barkyārūq (r. 485/1092–498/1105), since he had attempted to have Abū l-Maḥāsīn assassinated a number of times. When in the year 493/1100 Abū l-Maḥāsīn occupied Baghdad with his forces, 'Amīd al-Dawla was arrested and imprisoned inside (*fī bāṭin*) the caliph's palace. A month later, he was brought out dead, carried to his house, washed there, and buried in a tomb that he had renovated in the quarter of Qarāḥ b. Razī.³ There can be little doubt that 'Amīd al-Dawla did not die a

¹ Cf. *EI2*, s.v. al-Mustazhir bi-llāh, VII, 754b–56a (C. Hillenbrand).

² Nizām al-Mulk gave him his daughter in marriage and is said to have admired his qualities. See Safī al-Dīn Muḥammad b. 'Alī Ibn al-Ṭiṭṭaqā, *al-Fakhrī fī l-ādāb al-sultāniyya wa-l-duwal al-islāmiyya* (Cairo: al-Maṭba'a al-Raḥmāniyya, 1345/1927), 218. 'Amīd al-Dawla had also served al-Muqtadī (r. 467/1075–478/1094) as vizier. See *EI2*, s.v. al-Muqtadī, VII, 540a–41b (A. Hartmann); *ibid.*, s.v. *Djahīr*, II, 385a (C. Cahen).

³ Ibn al-Jawzī, *Muntaẓam*, XVII, 60; Ibn al-Athīr, *Kāmil*, VIII, 438; Ibn al-Ṭiṭṭaqā, *Fakhrī*, 218. The "Garden [*qarāḥ*] of Ibn Rāzīn" was situated close to the caliphal precinct (*ḥarīm*) in East Baghdad. See Guy LeStrange, *Baghdad During the Abbasid Caliphate* (1900; Westport, Conn.: Greenwood, 1983), 285–6.

natural death. It is noteworthy, however, that Abū l-Maḥāsīn, despite good reasons to dislike him, had ‘Amid al-Dawla killed quietly, and that he allowed him an adequate burial.

This is in fact a recurrent motif. High-ranking members of the court were often given certain privileges before their execution, notwithstanding the fact that their life was forfeited. Under the Saljūq régime, a precedent was set when in 455/1063 the vizier Kundurī, who had been banished from Baghdad to Marv al-Rūdh by his successor Niẓām al-Mulk, was apprehended in the bath-house by two military slaves (*ghilmān*) sent by the central government to kill him. Before his execution, he was granted the right to pray in the mosque and to say goodbye to his friends and family.⁴ The fall of one of Niẓām al-Mulk’s sons, the vizier Shams al-Dīn b. Niẓām al-Mulk (under Maḥmūd, r. 511/1118–525/1131), is another case in point. Maḥmūd’s powerful uncle Sanjar, the ruler of Khurāsān, had sent to his nephew asking that Shams al-Dīn be removed from office, exiled to Khurāsān, and imprisoned (*ib‘ād wa-ḥabs*) at Marv, Sanjar’s seat of government. Maḥmūd was under some pressure to grant Sanjar’s request.⁵ However, as a close advisor pointed out to him, there was the danger that, once under Sanjar’s control, the vizier would become a liability to Maḥmūd himself.⁶ The advisor reasoned that the expedient thing to do was to execute the vizier and dispatch his head to Sanjar. This sealed Shams al-Dīn’s fate. However, Maḥmūd remembered that the vizier had done him good service, and therefore arranged for a speedy and painless execution. Shams al-Dīn was beheaded in his prison cell, at the hand of the *khādim* ‘Antar.⁷ Note that Shams al-Dīn was not subjected to the ignominious spectacle of a public execution, a type of capital punishment that was used often in the Saljūq period, as will be shown. A measure of respect for Shams al-Dīn seems to reverberate in the following account of the vizier’s end:

When the executioner [*sayyāf*] came to him, he said: “Grant me time to pray two *raq‘as*!” As he was praying, he started to tremble, and he said to the executioner: “My sword is better than your sword, so kill me with it and do not make me suffer [*lā tu‘adhdhibnī*]!” Then he was killed.⁸

⁴ Al-Faṭḥ b. ‘Alī b. Muḥammad al-Bundārī, *Tārīkh dawlat āl Saljūq* (Cairo: Matba‘at al Mawsū‘āt, 1900), 28. See *EI2*, s.v. al-Kundurī, V, 387b–88b (G. Makdisi).

⁵ Despite Maḥmūd’s failed attempt to challenge Sanjar’s title of Great Saljūq in 513/1119, Sanjar had treated him amicably, bestowing the rule over Iraq on Maḥmūd and giving him his daughter in marriage. See *EI2*, s.v. Maḥmūd b. Muḥammad b. Malikshāh, VI, 63b–68a (C. E. Bosworth).

⁶ Ibn al-Jawzī, *Muntaẓam*, XVII, 220. Ibn al-Jawzī does not specify why Shams al-Dīn would have been a danger to Maḥmūd, but it seems likely that he could have informed Sanjar about plans directed against him at the court of Maḥmūd.

⁷ *Ibid.*, XVII, 221.

⁸ Ibn al-Athīr, *Kāmil*, VIII, 688–9. See also anon., *Mujmal al-tawārīkh wa-l-qīṣaṣ* (Tehran: Mu‘assasa-yi Khāwar, 1318/[1939]), 415. In addition, the former director of finances and intimate of sulṭān Maḥmūd (r. 511/1118–525/1131), ‘Azīz al-Dīn al-Mustawfī, was secretly

Alongside the sword, strangling (Arab. *khanaqa*, Pers. *khaba kardan*) was a quick and quiet tool to get rid of political enemies from within the milieu of high-ranking government officials. Members of the royal family, especially, were executed in this way.⁹ When in 466/1073–4, Qāwurd, the ruler of Kirmān, revolted against the sultān Malikshāh, he was taken to the fortress of Hamadhān, imprisoned there, and eventually strangled by the *khādim* Jawhar Āyīn.¹⁰ The sultān had been inclined toward mercy for his uncle Qāwurd, but the vizier Nizām al-Mulk pressed for his execution.¹¹ At least Qāwurd was killed in the privacy of the sultān's prison.¹² The sources do not always specify the exact circumstances of these prisoners' deaths, but they make frequent mention of local rulers or *amīrs* who were captured in battle and then died in prison. It appears reasonable to assume that this was not always of old age. Thus, Mankūbars, the governor of Fārs, died in prison after sultān Mas'ūd captured him in the battle of Kurshanba (or Panj Angusht) in 532/1137–8.¹³ After Sanjar's conquest of Samarqand in 536/1141–2, the city's ruler

executed in prison at Tīkrīt on the order of his longstanding enemy, the vizier Darguzīn. 'Azīz al-Dīn received the fatal blow while prostrated in prayer. See Bundārī, *Tārīkh dawlat āl Saljūq*, 156; Ghiyāth al-Dīn b. Humām al-Dīn Khwādamīr, *Dashtūr al-wuzarā'* (Tehran: Kitābfurūshī ū Chāpkhāna-yi Iqbal, 1317/[1938–9]), 204–5. For the political background to this execution, see Hamīd Dabashī, *Truth and Narrative: The Untimely Thoughts of 'Ayn al-Quḍāt al-Hamādhānī* (Richmond: Curzon Press, 1999), 475–503. A reassessment of 'Ayn al-Quḍāt's execution is offered by Safī, *The Politics of Knowledge*, 158–200. 'Azīz al-Dīn al-Mustawfī was the uncle of the famous historian al-Kātib al-Isfahānī. See Lutz Richter-Bernburg, *Der Syrische Blitz: Saladins Sekretär zwischen Selbstdarstellung und Geschichtsschreibung* (Beirut: Franz Steiner, 1998), 30–1, with further insightful analyses of 'Azīz al-Dīn al-Mustawfī's demise.

⁹ Nizām al-Mulk urges the Saljūq sultān to look after old families (*khānidānhā-yi qadīm*) and to treat the sons of kings with respect. See Lambton, "The Dilemma of Government in Islamic Persia," 59.

¹⁰ Anon., *Mujmal al-tawārīkh*, 408. Accounts of Qāwurd's end differ, however. Šadr al-Dīn Abū l-Ḥasan 'Alī b. Nāšir al-Ḥusaynī, *Zubdat al-tawārīkh* (edited by Muḥammad Iqbal; Lahore: Kulīyyat Fanjāb, 1933), 58, says he was killed in the tent, not the fortress, of the *amīr* Sūtīkīm. Bundārī, *Tārīkh dawlat āl Saljūq*, 50, has it that Jawhar Āyīn was unwilling to kill Qāwurd and that instead a "one-eyed Armenian slave [*ghulām*]" strangled Qāwurd. See also Rāwandī, *Rāhat al-šudūr*, 127; Muḥammad b. Ibrāhīm, *Tārīkh-i Kirmān* (Leiden: Brill, 1886), 13. Jawhar al-Āyīn later became the police governor (*shihna*) of Baghdad.

¹¹ Ḥusaynī, *Zubdat al-tawārīkh* (ed. Iqbal), 57. See *EI2*, s.v. Qāwurd b. Chagri Beg, IV, 807a (C. E. Bosworth).

¹² Another case of strangling is that of the *amīr* Būrbars, the brother of Arslān Arghūn, governor of Khurāsān. In 488/1095, sultān Barkyārūq sent Būrbars to fight Arslān Arghūn, who had made moves to make himself independent. Būrbars was defeated in battle, captured, put into prison in the Tirmidh fortress, and then strangled (*khuniqa*) on the order of his brother. See Ibn al-Athīr, *Kāmil*, VIII, 407. Female members of the royal family fared similarly. Around the year 500/1106, Malikshāh's widow Zubayda Khātūn, the mother of sultān Barkyārūq (r. 488/1095–498/1105), was strangled in the castle of Rayy, on the order of Barkyārūq's half-brother and copretender to the throne, Muḥammad b. Malikshāh. See Ibn al-Athīr, *Kāmil*, VIII, 429. Zubayda Khātūn had played an active role in promoting Barkyārūq's claims to power against Muḥammad's. On the role of women in Saljūq politics, see Carole Hillenbrand, "Seljuq Women," in Çiğdem Balm-Harding and Colin Imber (eds.), *The Balance of Truth: Essays in Honor of Professor Geoffrey Lewis* (Istanbul: Isis Press, 2000), 159–60; Safī, *The Politics of Knowledge*, 67–74.

¹³ *EI2*, s.v. Būz-Abeh, I, 1358a (C. Cahen). However, Bundārī, *Tārīkh dawlat āl Saljūq* (ed. 1900), 168, says that he was killed in front of the sultān (*bayna yadayhī*).

Arslān Khān was carried to Balkh and “died there a prisoner [*māta bihā asīran*].”¹⁴

It should be noted, however, that members of the ruling classes who fell from grace were not always executed. Other punishments awaited them in the ruler’s private prisons, punishments that nevertheless ensured that they no longer constituted a threat. The jurists thought a blind man unfit to rule,¹⁵ and thus destroying an opponent’s eyesight was an efficient way of eliminating him from the political game, to make him unsighted, literally, in the ruler’s private realm of punishment.¹⁶ In 466/1073–4, Malikshāh ordered two sons of his rebellious uncle Qāwurd to be blinded with a hot needle (*mīl kashīdand*) after defeating them in battle near Hamadhān.¹⁷ When the Saljūq chief *amīr* (*amīr-i amīrān*) Muḥammad b. Sulaymān rebelled against Barkyārūq and Sanjar in 490/1096–7, he was imprisoned and blinded by Sanjar (*kuḥila*).¹⁸ The Arabic expression *kaḥala* (“to blind”), a cognate of *kuḥl* (“collyrium”), indicates that the practice consisted, like the Persian *mīl kashīdan* (lit. “to draw a nail”), in drawing a needle across the eyes. As a later source attests, sometimes, whether intentionally or not, the needle left no permanent damage, and the victim regained sight.¹⁹

The cultural logic of private punishment

While royal blood or a certain loyalty among high-ranking members of the ruling classes may have ensured private punishment, reasons other than

¹⁴ Ibn al-Athīr, *Kāmil*, IX, 117. Arslān Khān, however, had already been severely ill and half-paralysed. See also the case of Saljūqshāh, another high-ranking member of the Saljūq princely family. The *amīr* Būz-Abā, on a raid in Fārs, wrestled Shīrāz from him in 534/1139–40, captured him, and confined him to the castle of Safiddiz (*qaʿat al-bayḍāʿ*) at Hamadhān. “That was the end of him,” comments the chronicler Bundārī; “nobody doubted that he died.” See Bundārī, *Tārīkh dawlat al-Saljūq* (ed. 1900), 173. On the castle of Safiddiz at Hamadhān, see Bert Fagner, *Geschichte der Stadt Hamadān und ihrer Umgebung in den ersten sechs Jahrhunderten nach der Hīgra* (Vienna: Notring, 1972), 4.

¹⁵ Abū l-Ḥasan ‘Alī b. Muḥammad al-Māwardī, *al-Aḥkām al-sultāniyya* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1386/1966), 19.

¹⁶ In addition to the examples given in the text, see the following instances of blinding: (1) Malikshāh blinds his brother Tikish and imprisons him in Tikrit castle (478/1085). See Ibn al-Athīr, *Kāmil*, VIII, 478. Cf. *EI2*, s.v. Malik-Shāh, VI, 273a (C. E. Bosworth). (2) Sultān Maḥmūd orders the brother of Dubays of Ḥilla to be blinded in the fortress prison of Barḥīn near Karaj (516/1122). See Ibn al-Athīr, *Kāmil*, VIII, 677, 683. (3) Sultān Muḥammad blinds and imprisons the *amīr* Mankūbarz b. Burībarz, the “sultān no-land [*sultān-i nāgahān*],” at Hamadhān (500/1106–7), and Mankūbarz remains in prison until Muḥammad’s son Mas‘ūd takes the city and releases him. See anon., *Mujmal al-tawārīkh*, 413; *EI2*, s.v. Muḥammad b. Malikshāh, VII, 407b (C. E. Bosworth). (4) Muḥammad imprisons and blinds (*chishmash tabāh kardand*) a rebellious *amīr* in Tikrit castle (501/1107–8). See anon., *Mujmal al-tawārīkh*, 410; *EI2*, s.v. Sāwa, IX, 86b (V. Minorosky and C. E. Bosworth).

¹⁷ Rāwandī, *Rāḥat al-sudūr*, 127.

¹⁸ Ibn al-Athīr, *Kāmil*, VIII, 409. A year later, Dawlatshāh, a member of the Saljūq ruling élite, was likewise imprisoned and blinded by Sanjar. See *ibid.*, VIII, 421.

¹⁹ See Wheeler Thackston (trans.), *The Baburnama: Memoirs of Babur, Prince and Emperor* (1996, New York: Modern Library, 2002), 45.

respect for the victim could determine that someone should be brought to justice secretly, that is, within the sphere of the ruler's immediate surroundings. It could be advisable for the ruler not to let the news of an execution reach the public. Telling in this respect is the rise and fall of the slave-boy Qaymāz, one of sultān Sanjar's favorites. Sanjar's weakness for Turkish slave-boys, with whom he entertained what can only be called love-hate relationships, went to such extremes that it earned him the ridicule of his contemporaries, as well as of later chroniclers.²⁰ In 511/1117, Qaymāz had convinced the drunken sultān to have the vizier Ṣadr al-Dīn Muḥammad b. Fakhr al-Mulk killed on the spot. Qaymāz held a personal grudge against Ṣadr al-Dīn.²¹ The next day, sober, the appalled Sanjar asked one of his close advisors, the *amīr* Qumāj, for advice on how to handle the situation. The scandalized *amīr* reportedly told the sultān:

"The protection of honor [*nāmūs*] requires that nobody from the subjects [*ra'īyya*] know your weakness, or that something like this could happen while you are the sultān . . . You must protect your dignity – be wary of your weakness! Go to your palace now and regain your composure!" Sanjar accepted the advice and kept this dishonor secret. Then after a while he ordered the execution of the slave. He was slaughtered in a most gruesome way [*muththila bihi aqbaḥa muthla*].²²

Qaymāz's predecessor as the object of Sanjar's romantic interest, the former slave Sunqur al-Khāṣṣ, had suffered an almost identical fate. His influence and power over the sultān, together with his arrogant demeanor, had made him much hated by the *amīrs*, and eventually by Sanjar himself, who gave order that the *amīrs* should kill him jointly, presumably within the walls of the sultān's palace.²³

What is common to all the cases mentioned heretofore is the notion of a realm of reward and punishment that was strictly separate from the public arena. This private sphere of punishment constituted exclusively the members

²⁰ Cf. Bundārī, *Tārīkh dawlat āl Saljūq*, 244. However, romantic involvement of rulers with slave-boys was by no means uncommon. Maḥmūd of Ghazna's infatuation with the slave-boy Ayāz and his son Mas'ūd's love for Nūshtigin were well-known in literary circles. See Nizāmī 'Arūdī Samarqandī, *Chahār maqāla* (translated by Edward G. Browne; London: Luzac, 1921), 56–8; Kaykā'ūs b. Iskandar b. Qābūs b. Washmgīr, *Qābūs-nāma* (London: Luzac, 1951), 47.

²¹ However, Khwāndamīr, *Dastūr al-wuzarā'*, 189, thinks that Sanjar ordered his execution and that a military servant (*fawjī*) at the court killed the vizier with an axe. Perhaps Sanjar seized the opportunity simultaneously to get rid of two high-ranking officials who had incurred his anger.

²² Bundārī, *Tārīkh dawlat āl Saljūq*, 245. Obviously, the incident could not have been kept fully secret, since Bundārī knows about it. Whether the story is true or not, it shows an ethos of maintaining secrecy about the inner workings of the court.

²³ *Ibid.*, 249. However, Sanjar knew of other ways of doing away with such importune and reputation-threatening careerists. Perhaps the most influential among his lovers was the "Exalted Intimate [*al-muqarrab al-ajall*]" Jawhar al-Khāṣṣ, who, according to the chronicler Bundārī, at one point commanded an army of 30,000 men. Sanjar – the same chronicler believes – had Jawhar killed in 534/1139 at the hands of a group of Bāṭinī assassins dressed as women. See Bundārī, *Tārīkh dawlat āl Saljūq*, 250; Ibn al-Athīr, *Kāmil*, IX, 108.

of the military and administrative élite, the *khawāṣṣ*, or “men of the régime.”²⁴ It was, furthermore, a sphere that claimed inviolability (*ḥurma*) as a body, in the sense that no outsiders were allowed to meddle with the ways in which this body disciplined itself.

A further incident nicely illustrates this theme. When, in 493/1100, a Bāṭinī assassinated an *amīr* at Sanjar’s court in Rayy, the Bāṭinī was apprehended and brought before the vizier Fakhr al-Mulk b. Niẓām al-Mulk. The vizier cursed the man and asked him whether he was not ashamed (*a-mā tasta-ḥiyū*). “You have ripped apart my inviolability [*ḥurma*],” he fumed, “and killed [one of] my retinue [*ḥashamatī*]! You have killed him in my house!” The Bāṭinī, about to be tortured and executed, replied that the vizier should not think himself and his intimates protected. The Bāṭinīs, he asserted, had already targeted six other men from the vizier’s retinue, including his brother.²⁵ It is telling that Fakhr al-Mulk should have expected the assassin to feel ashamed about his intrusion into the vizier’s *ḥasham*, a term that, like *khawāṣṣ*, has different shades of meaning.²⁶ Fakhr al-Mulk seems to have used the term to refer to his courtly entourage of servants and *amīrs* that, at least in his own eyes, was protected by the notion of inviolability (*ḥurma*), even vis-à-vis enemy forces. “Men of the régime” were to be punished within and by the court, at the hand of loyal slave servants (*khādīms*),²⁷ military slaves (*ghulāms*),²⁸ chamberlains (*ḥājibs*),²⁹ or other types of sword-bearers (*jāndārs*).³⁰

As the example of Sanjar’s slave-boy Qaymāz suggests, an effort was made to prevent the public from learning about offenses that had occurred within the courtly sphere. As Ibn Ḥamdūn (d. 562/1166) recommended to the ruler, “a crime committed in private [*dhanb al-sirr*] requires a punishment executed

²⁴ My argument is simplified somewhat here, since it is not always easy to define with exactitude the line that separated the distinguished members of the ruling class (*khawāṣṣ*) from the commoners (*awāmm*) as distinct social groups. See Roy Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (1980, London: Tauris, 2001), 115–16; Leder, “Aspekte arabischer und persischer Fürstenspiegel,” 132.

²⁵ Ibn al-Jawzī, *Muntaẓam*, XVII, 55. Fakhr al-Mulk was killed by a Bāṭinī seven years later, in 500/1107. See *ibid.*, XVII, 99.

²⁶ See Lambton, “The Administration of Sanjar’s Empire as Illustrated in the ‘*Atabat al-Katāba*,’” *BSOAS* 20 (1957), 373. The sphere occupied by the *khawāṣṣ* was stratified according to the criterion of closeness to the ruler. One may distinguish, for example, between the harem of the ruler, the sphere occupied by the ruler’s boon-companions (*nudamā*), and the reception space at the court. All these spaces can in a sense be regarded as private.

²⁷ Anon., *Muǧmal al-tawārīkh*, 408; Ibn al-Jawzī, *Muntaẓam*, XVII, 220 (*khādīms* carrying out executions in prison cells).

²⁸ The *amīr* Zankī was slain by slaves in the palace of sulṭān Muḥammad when the latter became the Saljūq sulṭān of Iraq in 547/1152. See Ḥusaynī, *Zubdat al-tawārīkh*, 238.

²⁹ Mas’ūd’s vizier Kamāl al-Dīn al-Khāzīn was handed over to the great chamberlain Tatār and executed in 533/1138–9. See Ḥusaynī, *Zubdat al-tawārīkh*, 215; Bundārī, *Tārīkh dawlat al-Saljūq* (ed. 1900), 171.

³⁰ The *jāndār* Zankī rose to power and eventually became an *amīr* after he helped to assassinate the powerful ‘Abd al-Raḥmān Ṭaghāyurk, the *amīr ḥājib* of Mas’ūd, in 541–2/1146–7. See Ibn al-Athīr, *Kāmil*, IX, 146–7.

in private [*uqūbat al-sirr*].”³¹ However, there is an exception to this pattern. Members of the *khawāṣṣ* could at times lose the “privilege” of an inner-courtly, and therefore less dishonorable, execution.³² *Amīrs* who revolted against their lord, especially, could be symbolically ejected from the ruler’s private sphere and given over to public disgrace. As the chronicler Ibn al-Athīr relates, the unruly *amīr* Iyāz behaved with little respect toward sultān Muḥammad. Therefore, in 498/1104, the sultān summoned him to his palace in Baghdad, and the unsuspecting *amīr* was assailed and decapitated by some of the sultān’s fellow conspirators. His body was then wrapped in a sack and thrown out on the street by the sultān’s palace (*dār al-mamlaka*).³³ Such expulsion and public display of the executed were a clear signal to the *amīr*’s followers that they, too, could no longer count on the protection of *ḥurma* covering those close to the court. In 541/1146–7, sultān Mas‘ūd decided to rid himself of ‘Abbās, the powerful governor of Rayy, and summoned him to his palace in Baghdad. While his companions were made to wait outside, ‘Abbās was led into a chamber, assaulted, and beheaded on the spot. “They threw his head to his companions,” relates the chronicler. “Then they threw out his body. His baggage and tents were plundered. The city was aroused by this event.”³⁴ The *amīrs* Khāṣṣbak and Zankī, who, according to some, had plotted to overthrow sultān Mas‘ūd, were treated in the same way some five years later. “They cut off the head of each of them and threw them out of the house. The news spread in the army that they had been killed, so their followers fled or were killed, and their animals, weapons, and belongings were seized.”³⁵

In sum, the ruling élite claimed complete punitive autonomy over its members, that is, those who were “distinguished [*khāṣṣ*]” by their share in the task of governing. Punishment of offenses committed in the setting of the court tended to be prosecuted in private, except when the offender was ritually expelled from the court. This, however, was the exception to the rule. Punishment in the ruler’s private sphere was further characterized by

³¹ Bahā’ al-Dīn Muḥammad b. al-Ḥasan Ibn Ḥamdūn, *al-Tadhkira al-Ḥamdūniyya* (Beirut: Dār Ṣādir, 1996), I, 301. The same principle is stated in an early seventh-/fourteenth-century anonymous (Pseudo-Tha‘ālibī) mirror for viziers, the *Tuḥfat al-wuzarā’* (Beirut: Dār al-Qalam Press, 1975), 58.

³² This privilege was also enjoyed by Turkish subjects of Ottoman rule in nineteenth-century Tunis and Algiers. While Turks condemned to execution were usually strangled inside the Casbah, Arab subjects were hanged at the site of their crime. See Brunschwig, “Justice religieuse et justice laïque,” 64; Miriam Hoexter, “La shurṭa à Alger à l’époque turque,” *SI* 56 (1982), 134.

³³ Ibn al-Athīr, *Kāmil*, VIII, 507; Ibn al-Jawzī, *Muntaẓam*, XVII, 91; Anon., *Mujmal al-tawārikh*, 410.

³⁴ Ibn al-Athīr, *Kāmil*, XI, 147. For ‘Abbās, see Ibn al-Jawzī, *Muntaẓam*, XVIII, 52. Ibn al-Jawzī is full of praise for ‘Abbās’s hatred of the Bāṭinīs and claims that, after his death, “people wept over him because he used to do good deeds and give alms.”

³⁵ Husaynī, *Zubdat al-tawārikh*, 238–9; Ibn al-Athīr, *Kāmil*, XI, 188; Ibn al-Jawzī, *Muntaẓam*, XVIII, 84, 91–2.

the near absence of any judicial control or influence. The ruler, or his immediate delegate, the vizier, or provincial governor, could administer punishment like a medieval Muslim *pater familias* might have disciplined the members of his household: punitive measures were at times necessary, but things were always dealt with, as it were, “within the family.”³⁶ Most jurists held extrajudicial disciplinary measures (*taʿzīr*) to be a prerogative of the husband, father, and slave-owner, granted on the assumption of inviolability (*ḥurma*) of the familial sphere, which was protected against any intrusion from the outside.³⁷ Located at both ends of the social spectrum, the private spheres of the family and the court were constituted as largely autonomous and extrajudicial provinces of punitive authority.

Punishments carried out before the ruler’s tribunal

Between the sphere of private punishment of the Saljūq ruling class and the public arena of the city there was an intermediary sphere of punishment: the penal tribunals held by the ruler. The chronicles frequently report that people were punished “in front of the ruler [*bayna yadayhi*],” or that they were “brought before the sultān” and then beaten or killed, or executed “under his banner.” Such formulas seem to refer to the setting of a courtly tribunal, in which the sultān appeared on his throne with all the insignia of his authority, surrounded by the members of the military, administrative, and religious élite, as depicted in some late Saljūq ceramics, stucco reliefs, and miniatures.³⁸

In 494/1101, in the battle of Sharrā near Hamadhān between the two Saljūq pretenders Barkyārūq and Muḥammad, the latter’s vizier Muʿayyad al-Mulk was captured by Barkyārūq’s forces. Barkyārūq resented the fact that the vizier, whom he also suspected of Bāṭinī connections, had incited Muḥammad to revolt against him. In what seems to have been an inter-rogation in front of the throne, Barkyārūq confronted the vizier with his alleged crimes. Muʿayyad al-Mulk preferred not to answer, whereupon the sultān, enraged, proceeded to kill him “with his own hands.”³⁹ It is the Great Saljūq Sanjar (r. 490/1097–552/1157), however, who is mentioned as holding

³⁶ According to the anonymous author (Pseudo-Māwardī) of *Naṣīhat al-mulūk* (Alexandria: Muʿassasat Shābāb al-Jāmiʿa, 1988), 203–5, the king must educate (*rawwada*) and lead (*sāsa*) the *khwāṣṣ*. Leder, “Aspekte arabischer und persischer Fürstenspiegel,” 132, suggests translating *khwāṣṣ* as “direct subjects” (“direkte Untergebene”).

³⁷ Johansen, “Eigentum, Familie und Obrigkeit,” 52. Corporal punishment in the medieval Islamic education of children was practiced widely and with such vehemence that writers like Ghazālī and Ibn Khaldūn had to make the case for moderateness. See Avner Giladi, *Children of Islam: Concepts of Childhood in Medieval Islam* (New York: St. Martin’s Press, 1991), 61–6.

³⁸ See Katharina Otto-Dorn, “Das seldschukische Thronbild,” *Persica* 10 (1982), 149–203. For ancient Iranian motives of kingship in the royal insignia, see Heribert Busse, “Thron, Kosmos und Lebensbaum im Schāhnāma,” in W. Eilers (ed.), *Festgabe deutscher Iranisten zur 2500 Jahrfeier Irans* (Stuttgart: Hochwacht Druck, 1971), 8–21.

³⁹ Ibn al-Athīr, *Kāmil*, VIII, 442; Bundārī, *Tārīkh dawlat āl Saljūq*, 240; Anon., *Mujmal al-tawārīkh*, 409–10. See *EI2*, s.v. Nizāmiyya, VIII, 81b (C. E. Bosworth).

such tribunals most frequently.⁴⁰ In 493/1100, Sanjar battled and finally captured the rebellious governor of Qūmis, Jurjān, and Western Khurāsān, the *amīr* Dād Ḥabashī b. Altūntāsh. When Dād Ḥabashī was brought before Sanjar's throne, he offered a ransom of 100,000 *dīnārs*, but Sanjar would not have it, so the *amīr* was executed on the spot.⁴¹ Two years later, in 495/1102, Sanjar was confronted with an invasion into Khurāsān by the ruler of Transoxania, Qadrkhān Jibrā'īl b. 'Umar. Fortunately for Sanjar, who at the time was still young and only beginning to consolidate his control over Khurāsān, Qadrkhān was careless enough to absent himself from his army camp and go hunting, accompanied only by a small band of followers. One of Sanjar's *amīrs* captured Qadrkhān and brought him before the sultān. Sanjar "began to chide him, and he [Qadrkhān] asked for mercy," reportedly kissing the ground before the sultān.⁴² However, his plea was not accepted. "Either you serve us, or you don't," Sanjar exclaimed, "and if you don't, then the sword will be your only reward!" Then Qadrkhān was beheaded.⁴³ After a battle against his nephew, Mas'ūd b. Muḥammad, in 526/1132, Sanjar summoned a captured *amīr*, Qarāja, to his tribunal, interrogated him, and then proceeded to have him executed in cold blood (*ṣabran*).⁴⁴

Perhaps the most well-known incident of this kind is the execution of Sanjar's former chamberlain and intimate, 'Alī Chatrī, the Parasol Bearer, in 547/1152.⁴⁵ Chatrī had been a personal favorite of Sanjar. He had, according

⁴⁰ In addition to the examples discussed, mention should be made of the following executions before a military tribunal: (1) In 513/1119, after beating his nephew Maḥmūd in battle at Sāwa, Sanjar summoned the *amīr* Mankūbars, an old personal enemy, before his tribunal, and proceeded to kill him with his own hands. See Ibn al-Athīr, *Kāmil*, VIII, 644. (2) On the same occasion, the *amīr* Ghazghālī, who had previously offered to surrender young Maḥmūd to Sanjar, was chided by Sanjar for his treacherous conduct and then executed. See Ibn al-Athīr, *Kāmil*, VIII, 641; anon., *Mujmal al-tawārīkh*, 413. (3) When the powerful *amīr* Būz-Abā rebelled against sultān Mas'ūd in 542/1147–8, he was captured in battle and cut in half "before Mas'ūd," and his head was hung up in front of the caliph's palace in Baghdad. See Ibn al-Jawzī, *Muntaẓam*, XVIII, 55; Ibn al-Athīr, *Kāmil*, IX, 150; Bundārī, *Tārīkh dawlat āl Saljūq*, 184. On Būz-Abā's career, see *EI2*, s.v. Būz-Abēh, I, 1358a (C. Cahen). (4) Another instance in Ibn al-Jawzī, *Muntaẓam*, XVII, 52 (Barkyārūq in 493/1100).

⁴¹ Ḥusaynī, *Zubdat al-tawārīkh*, 178; Bundārī, *Tārīkh dawlat āl Saljūq*, 259–60. Ibn al-Athīr knows that Ḥabashī was killed after battle by the *amīr* Bazghash, which does not exclude the possibility of an execution before the sultān's tribunal. See Ibn al-Athīr, *Kāmil*, X, 201–2. According to some chroniclers, Dād Ḥabashī had enlisted Bāṭinīs from Ṭabas as soldiers. See Hodgson, *Order of the Assassins*, 86.

⁴² Ḥusaynī, *Zubdat al-tawārīkh*, 180.

⁴³ Ibn al-Athīr, *Kāmil*, VIII, 477. See also Bundārī, *Tārīkh dawlat āl Saljūq*, 241.

⁴⁴ Ibn al-Athīr, *Kāmil*, 526, IX, 36–7; Bundārī, *Tārīkh dawlat āl Saljūq*, 199; anon., *Mujmal al-tawārīkh*, 413. Mas'ūd b. Muḥammad b. Malikshāh was trying to wrest power from his brother Tughril, to whom Sanjar had given Iraq. In the course of the battle, the *amīr* Qarāja had mounted a frontal attack on Sanjar's position. See *EI2*, s.v. Mas'ūd b. Muḥammad b. Malikshāh, VI, 782a (C. E. Bosworth).

⁴⁵ The name is spelled 'Alī Ḥāchī in Nishāpūrī's *Saljūqnāma*. Muḥammad Iqbāl, the editor of Rāwandī's *Rāḥat al-ṣudūr*, gives the name as 'Alī Jatārī (p. 176). However, *chatr* in the meaning of "ceremonial parasol" makes the reading Chatrī more likely, as is proposed also in the new edition (by A. H. Morton) of the *Saljūqnāma* (p. 60). The parasol (Arab. *mizalla*, Pers. *chatr*)

to the chronicler, “risen from the extremes of buffoonery to the office of chamberlain [*ḥājib*],” and then received Herat as his fief. He rebelled, however, making a pact with the Ghūrid king, ‘Alā’ al-Dīn Ḥusayn, to overthrow Sanjar. This act of treachery, states the chronicler Rāwandī, was an onerous test for Sanjar. Chatrī and ‘Alā’ al-Dīn Ḥusayn were defeated crushingly on the plain of Awba. Whereas ‘Alā’ al-Dīn was held as a prisoner for some time, “the sulṭān ordered ‘Alī Chatrī to be cut in half under the banner [*bi-zīr-i rāyat*].”⁴⁶

Banner and throne symbolism in the courtly tribunal

It is unlikely that Sanjar, a shrewd politician, indulged in executions before his throne because of disappointed love, feelings of revenge, or simple lust for blood. After all, *amīrs* and intimates of the court tended to be punished in private. Furthermore, Sanjar had shown himself quite capable of granting pardon. At the request of his nephew Maḥmūd, whom he had defeated in the battle of Sāwa in 513/1119, he spared the chief chamberlain ‘Alī Bār, even though the latter had been primarily responsible for Maḥmūd’s ill-fated rebellion.⁴⁷ It appears more likely that Sanjar used the tribunal setting to put in place a carefully devised punitive ritual. Executions before the ruler’s tribunal were premeditated spectacles.⁴⁸

The semiotic program of the punitive tribunal was conceived to demonstrate the supreme military prowess and elevated judicial authority of the ruler. To achieve this end, symbols such as banners or weapons were used. It is perhaps no coincidence that the chroniclers take care to mention that ‘Alī Chatrī was executed “beneath the royal banner [*zīr-i rāyat*].” The banner was the symbol of power and justice *par excellence*. To capture the banner of an enemy army was a military feat of great significance. In 460/1067–8, booty and banners (*a’lām*) were brought to Baghdad after a victory over an Egyptian army. The banners were publicly broken and ceremoniously paraded (*īfa bihā*) through the city.⁴⁹ As Ibn al-Athīr put it, with sulṭān Mas’ūd’s

was one of the essential royal insignia in Islam. In Saljūq times, according to P. A. Andrews, “the office of its bearer, *chatr-dār*, was among the highest that a *ghulam* could attain, with the standard bearer, the master of the wardrobe, and the armour-bearer”: s.v. “Mizalla,” *EI2*, VII, 192b. For the use of the *chatr* under the Ghūrids, see *EI2*, s.v. Ghūrids, II, 1100b (C. E. Bosworth).

⁴⁶ Nishābūrī, *Saljūqnāma*, 47; Rāwandī, *Rāḥat al-ṣudūr*, 176. ‘Alī Chatrī’s revolt is also mentioned in Juzjānī, *Ṭabaqāt-i Naṣīrī* (tr. Raverty), 237. Only the unknown author of a Saljūq history preserved in Rashīd al-Dīn’s *Jāmi’ al-tawārīkh* (tr. Luther), 88, identifies Awba as the place of the battle.

⁴⁷ Bundārī, *Tārīkh dawlat āl Saljūq*, 191. ‘Alī Bār, however, soon fell out of favor, fled, and was chased through Khūzistān; he was captured and beheaded by the *amīr* Nūr al-Dīn b. Bursuq. His head was then sent to Maḥmūd. See Ibn al-Athīr, *Kāmil*, VIII, 645; anon., *Mujmal al-tawārīkh*, 414.

⁴⁸ Ibn al-Athīr, *Kāmil*, 526, IX, 37: *qatalahu ṣabran*. I could be overinterpreting the term *ṣabran* here. *MA*, IV, 245, 247, states that to execute someone *ṣabran* merely means that the condemned is a prisoner and as such has no way of defending himself.

⁴⁹ Ibn al-Athīr, *Kāmil* (ed. Tornberg), X, 57.

death in 547/1152, “the fortunes of the Saljūq family died; there was no banner to depend upon or to rally around.”⁵⁰ Anvarī (d. 585/1189), court poet of Sanjar, wrote about the longing of the far provinces of the kingdom to prosper in the shadow of the royal banner (*hawā-yi sāya-yi rāyat*).⁵¹ His contemporary Sūzānī (d. 569/1173), another of Sanjar’s panegyrists, eulogized the royal banner’s ability to protect all mankind (*ayā panāh-i hama khalq zēr-i rāyat-i tū*).⁵²

In the Saljūq banner, different traditions seem to converge. From early times, the Central Asian Turks are known to have carried horsetail banners (*tughs*) into battle,⁵³ a tradition that was continued by the Saljūqs and, later on, the Ottoman sultāns.⁵⁴ In addition, the Arab-Islamic tradition boasted a rich heritage of war-banners.⁵⁵ However, the royal banner was a symbol not only of warfare, but also of justice. In the Iranian epic tradition, the legendary Kāwa, a blacksmith from Iṣfahān, was credited with inventing the royal banner (*dirafsh-i Kāviyān*) and leading the revolt of the just king Farīdūn against the tyrant Ḍaḥḥāq.⁵⁶ Poets of the Saljūq period, such as Khāqānī (d. 595/1199), likened the banner of their patrons to that of Kāwa.⁵⁷ The royal banner, then, was a symbol loaded with meaning, and an indispensable element of rituals of justice before the sultān’s tribunal. The banner-carrier

⁵⁰ Ibn al-Athīr, *Kāmil*, IX, 186. Rāwandī writes that “the flags and emblems of his [the ruler’s] luck are protected by God.” See his *Rāḥat al-ṣudūr*, 149. See also the banner poem by Būyid poet Abū l-Faraj Babbaghā quoted in al-Muḥassin b. ‘Alī al-Qādī Tanūkhī, *Nishwār al-muḥāḍara wa-akhbār al-mudhākara* (translated by D.S. Margoliouth; London: Royal Asiatic Society, 1922), 148, which describes the royal banner rising over the soldiers’ spears like the master over his slaves.

⁵¹ *LN*, s.v. *rāyat*.

⁵² *LN*, s.v. *shīr*. When Sanjar visited Bayhaq after defeating his nephew Maḥmūd in 513/1119, Ibn Funduq gave a speech in which he interpreted the arrival of “the shadow of the sultān’s banners in the regions” as an eschatological sign announcing the end of the world. See Ibn Funduq, *Tārīkh-i Bayhaq*, 100.

⁵³ *EI2*, s.v. *Tugh*, X, 590a (C. E. Bosworth). Around the time of the Saljūqs, the practice is evidenced for the Qarākhānids. See *EI2*, s.v. “Mizalla,” VII, 192b (P. A. Andrews). Roy Mottahedeh has drawn my attention to the *tugh*. A fifth/eleventh-century Central Asian mirror for princes states that “two things increase the fame of princes: their banner in the courtyard and their feast-table in the place of honor.” See Yūsuf Khāṣṣ Ḥājib, *Kutadgu Bilig* (translated by Robert Dankoff; Chicago: University of Chicago Press, 1983), 124. The Ottomans put horsetail banners in the palace’s courtyard when going on military campaigns. See *EI2*, s.v. *Harb*, III, 191b (V. J. Parry).

⁵⁴ *EI2*, s.v. *Harb*, III, 191b (V. J. Parry).

⁵⁵ See Khalil ‘Athamina, “The Black Banners and the Socio-Political Significance of Flags and Slogans,” *Arabica* 36 (1989), 307–26.

⁵⁶ Al-Mufaḍḍal b. Sa’d Māfarrūkhī, *Maḥāsīn Iṣfahān* (translated by Ḥusayn b. Muḥammad Awī; Tehran: Shirkat-i Sahām-i Chāp, [1949]), 87. Cf. *EI2*, s.v. *Kāwa*, IV, 775a (eds.). For the genesis of this legend, see Arthur Christensen, *The Kayanians* (1931, Bombay: K. R. Cama Institute, 1993), 128.

⁵⁷ *LN*, sv. *rāyat*: *gū rāyat-i Bū l-Muzaffarī bīn | ān-ki akhtar-i Kāviyān nadīda ast*. The *dastārcha* (“royal handkerchief”), another symbol of kingship, occasionally seems to have hung from the royal standard. See Aboulala Soudavar, *The Aura of Kings: Legitimacy and Divine Sanction in Iranian Kingship* (Costa Mesa: Mazda Publishers, 2003), 11, quoting a poem of Khāqānī (*māh-i zarrīn . . . dastārcha zīr*).

(*nishān-dār*) was one of the officials positioned next to the sultān's throne during audiences.⁵⁸

At the center of the tribunal was the ruler himself, sitting on his throne. There are few descriptions of what actual thrones looked like in the Saljūq period, but at least some of the throne symbolism can be gleaned from literary sources. Firdawsī's *Shāhnāma* compares the ruler sitting on the throne to the sun and the moon shining over the earth, revealing his awe-inspiring divine effulgence (*farr-i īzādī*) to mankind.⁵⁹ In addition to ancient Iranian ideas about divine kingship, the throne symbolism also played with Islamic notions. The throne's insignia – the cup of life, or a twig from the tree of life, depictions of the bird of paradise, the peacock, and of other marvelous animals⁶⁰ – reminded the beholder of paradise and eternal life and thereby suggested the ruler's connectedness with other-worldly realms.⁶¹ God's

⁵⁸ Otto-Dorn, "Das seldschukische Thronbild," 168. The rest of the time, he was to stand ready at the gate to the palace. See Yūsuf Khāṣṣ Ḥājib, *Kutadgu Bilig* (tr. Dankoff), 124. Another official who was typically present when the ruler sat on his throne was the sword-bearer (*sayyāf*). Otto-Dorn finds this figure standing right next to the throne on luster relief tiles from Kāshān (mid-seventh/thirteenth c.), on a metal candle stick (1225), and in an illustration in a seventh-/thirteenth-century copy of the *Kitāb al-diryāq* of Pseudo-Galen. Otto-Dorn thinks that the *sayyāf* was just some "high military office[r]," but it can be conjectured that he fulfilled the role of an *ad hoc* executioner in the ruler's punitive tribunals. An illustrated manuscript of *Kalīla wa-Dimna* (Iraq, late seventh/thirteenth c.) shows the ruler's "court of justice and punishment" (*majlis-i 'adl wa-siyāsāt*). Behind the ruler, who sits on an elevated platform surrounded by golden posts (*ʿālim*), stand two sword-bearers with their weapons unsheathed. See Oya Pancaroğlu, "The Emergence of Turkish Dynastic Presence in the Islamic World: Cultural Experiences and Artistic Horizons, 950–1250," in David J. Roxburgh (ed.), *Turks: A Journey of a Thousand Years, 600–1600* (London: Royal Academy of Arts, 2005), 82, 84–5.

⁵⁹ Busse, "Thron, Kosmos und Lebensbaum," 15–16. That pious feelings could be offended by attempts to restore the Persian royal tradition of old is shown by the fact that the Ziyādīd Mardāwīj (d. 323/935) was branded as an unbeliever (*kāfir*) by the religious establishment. He had built for himself an elaborate and richly decorated throne and threatened to renew the grandeur of the Persian empire. See Aḥmad b. Muḥammad Ibn Miskawayh, *Tajārib al-umam* (Oxford: Blackwell, 1920–1), I, 316. For *farr-i īzādī*, cf. Lambton, "Islamic Mirrors for Princes," *Atti del Convegno internazionale sul tema: la Persia nel Medioevo* (Rome: Accademia nazionale dei Lincei, 1971), 425, and see below.

⁶⁰ A panel from Rayy in the Pennsylvania Museum of Art shows a king (possibly Tughril III, d. 590/1194) seated on a throne which rests on the backs of elephants. See *EI2*, s.v. Fil. Iconography, II, 894a (G.M. Meredith-Owens). Firdawsī talks in some length about the Sassanian king Kaykhusraw's famous "elephant throne." See Busse, "Thron, Kosmos und Lebensbaum," 14. Cf. the notion that on the Day of Judgment hell (*jahannam*), in the form of a terrifying beast, will sit to the left of God's throne. See Abū Ḥāmid Muḥammad b. Muḥammad Ghazālī, *fi kashf 'ulūm al-ākhira al-Durra al-fākhira* (translated by Smith Jane Idleman; Missoula: Scholars Press, 1979), 61. For the elephant as a marvelous, and also terrifying, animal of punishment, see pp. 70–1.

⁶¹ How visual representations of the ruler's authority and his microcosmic status as the embodiment of human perfection could percolate down to the lower strata of Saljūq society is shown by Oya Pancaroğlu, "A World Unto Himself: The Rise of New Human Image in the Late Seljuq Period (1150–1250)" (Ph.D. dissertation, Harvard University, 2000), 254. See also Otto-Dorn, "Die Landschaftsdarstellung in der seldschukischen Malerei," in Ulrich Haarmann and Peter Bachmann (eds.), *Die islamische Welt zwischen Mittelalter und Neuzeit: Festschrift für Hans Robert Roemer zum 65. Geburtstag* (Beirut: Franz Steiner, 1979), 508–12.

throne of justice on the Day of Judgment constituted an obvious analogy to the temporal ruler's throne.

The space in front of the ruler's throne was a transitory one, a space in which temporal and eternal justice appeared to converge, and in which there was always the real potential that one could literally be transported from this world to the next.⁶² It fits with this reading that the tribunal setting partook neither entirely of the private nor entirely of the public realm. The tribunals' dealings were not confined to the inner recesses of the sultān's palace, nor was attendance unrestricted. By the same token, the tribunal was neither a formally judicial nor a completely extrajudicial body: while punishment before the ruler's throne was often carried out on an *ad hoc* basis, representatives from among the legal scholars could be present. In other words, the space before the ruler's throne was "inbetwixt," a third place between the public and the private, between the formal and the informal. It was a space in which Islamic notions of deserved punishment on the Day of Judgment and the god-like and awe-inspiring charisma of the king (his *farr-i ʿizādī*) were the defining meaning-bestowing dimensions. Thus, the sphere of punishment marked by the ruler's tribunal was not only situated *in between* the public and the private, but also *above* them. Punishment before the ruler's throne was one of the comprehensive rituals put in place by the state that elevated the ruler over the rest of society.⁶³

Public punishments

A third sphere of punishment was the public arena of the city. The bulk of historical information concerns this third sphere, and I will devote the remainder of this chapter as well as the next to discussing public punishment. Punishment in the city took place in easily accessible places that often had a certain strategic and symbolic significance. At Baghdad, for example, the Nubian Gate (Bāb al-Nūbī)⁶⁴ is mentioned with great frequency as a place of

⁶² See Otto-Dorn, "Die Landschaftsdarstellung in der seldschukischen Malerei," 507, who comments that Saljuq pictorial art was marked by an ambivalent combination of realistic and magical elements.

⁶³ For a discussion of "political ritual" along the lines proposed here, see Catherine Bell, *Ritual: Perspectives and Dimensions* (New York: Oxford University Press, 1997), 129–30. Studies of the symbolic aspects of power have flourished since the publication of Ernst Hartwig Kantorowicz's *The King's Two Bodies* (Princeton: Princeton University Press, 1957). See Clifford Geertz, "Centers, Kings, and Charisma: Reflections on the Symbolics of Power," in Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (1983, New York: Basic Books, 2000), 123–4. In Islamic studies, however, there are few examples. See notably Paula Sanders, *Ritual, Politics, and the City in Fatimid Cairo* (Albany: SUNY Press, 1994). J.-C. Garcin discusses the visualization of political power in Mamlūk *mazālim* courts in "La révolte donnée à voir chez les populations civiles de l'état militaire mamluk (XIIIe–XVe s.)," in Eric Chaumont (ed.), *Autour du regard: mélanges Gimaret* (Louvain: Peeters, 2003), 263.

⁶⁴ Reuben Levy thinks the name should be read *Bāb al-Nawbī* ("Sentry Gate"). See Levy, *A Baghdad Chronicle* (1929, Philadelphia: Porcupine Press, 1977), 216, 266.

executions, floggings, and ignominious parades.⁶⁵ The Bāb al-Nūbī was the principal entrance to the caliphal city. Adjacent lay suburbs “inhabited by the lowest orders of the Baghdad populace.”⁶⁶ The Bāb al-Nūbī thus demarcated a physical point of contact between the ruler and his subjects. At the same time, the ruling authorities, in their attempt to dominate the urban landscape visually, took care to distribute public punishments evenly over the city. In 559/1164, members of a gang of criminals (*luṣūs*) were executed in five different public spots in East Baghdad on the same day:⁶⁷ at the Bāb al-Azaj (“Gate of the Portico”), one of the chief inner gateways of the caliphal city;⁶⁸ in the great square of the Palace mosque (*al-rah̄ba*);⁶⁹ at the Bāb al-Gharaba (“Gate of the Willow-Tree”), one of the seven gates in the inner wall surrounding the caliphal palace;⁷⁰ in the street of the saddle-makers for asses (*al-akkāfīn*); and finally, at the entrance to, and under the central archway (*‘aqd*) of, the Sūq al-Sultān (“Market of the Sultān”), which was situated at the northern tip of the caliphal city.⁷¹ In 448/1056, the head of the cloth merchants (*shaykh al-bazzāzīn*) was gibbeted on the door of his shop (*dukkān*) on charges of being an extremist Shī‘ite.⁷² At Iṣfahān, the capital of the Saljūqs, there were public executions at the city gates⁷³ and on the banks of the river Zarrīna.⁷⁴ In one of the most infamous executions under the Saljūqs, the poet-mystic and jurist ‘Ayn al-Quḍāt al-Hamadhānī (d. 525/1131) was gibbeted at the door of his own *madrasa* in Hamadhān.⁷⁵

Perhaps the most obviously public form of punishment, however, was ignominious parading through the city, a practice that went by the conspicuous name of “making someone public [*tashhīr*].” In 450/1059, the vizier Ibn al-Muslima, sitting on a donkey, was led in procession from East Baghdad over the Tigris to the western shore, shown around in the suburbs, and brought back to the eastern side.⁷⁶ Other instances speak of punitive parades

⁶⁵ See, for example, Ibn al-Jawzī, *Muntaẓam*, XVII, 49, 274. For pre-Saljūq punishments at the Bāb al-Nūbī, see Ibn Miskawayh, *Tajārib al-umam*, I, 197.

⁶⁶ LeStrange, *Baghdad During the Abbasid Caliphate*, 274–5.

⁶⁷ Ibn al-Jawzī, *Muntaẓam*, XVIII, 160. For another example of simultaneous execution in different parts of Baghdad, see *ibid.*, XVII, 225 (the al-Ma‘muniyya archway, the Tuesday market, and the al-Jadīd archway).

⁶⁸ LeStrange, *Baghdad During the Abbasid Caliphate*, 296. The Bāb al-Azaj lay near the Niẓāmiyya *madrasa* to the south-east of the palaces.

⁶⁹ Ibn al-Jawzī mentions public punishments in the courtyard of the Palace mosque quite frequently. See his *Muntaẓam*, XVII, 52, 76, 307, 310, XVIII, 159.

⁷⁰ LeStrange, *Baghdad During the Abbasid Caliphate*, 265. The Bāb al-Gharaba was situated not far from the Tigris to the north of the palaces.

⁷¹ *Ibid.*, 282. ⁷² *MA*, III, 244. ⁷³ Anon., *Mujmal al-tawārīkh*, 411.

⁷⁴ Ibn al-Athīr, *Kāmil*, IX, 546; Ibn al-Jawzī, *Muntaẓam*, XVII, 100; Ḥusaynī, *Zubdat al-tawārīkh* (ed. Iqbal), 83. See Otto Spies, “Über die Kreuzigung im Islam,” in Rudolph Thomas (ed.), *Religion und Religionen: Festschrift für Gustav Mensching* (Bonn: Ludwig Röhrscheid Verlag, 1967), 151, 153, mentioning cases of gibbeting on the banks of the Guadalquivir and the Tigris.

⁷⁵ See Safī, *The Politics of Knowledge*, 165.

⁷⁶ Ibn al-Jawzī, *Muntaẓam*, XVI, 37–8; Ibn al-Athīr, *Kāmil*, VIII, 156; Ḥusaynī, *Zubdat al-tawārīkh*, 62; Ibn al-Ṭīqtaqā, *Fakhrī*, 217.

from the Bāb al-Nūbī to the Bāb al-Azaj in Baghdad, that is, from the north of the caliphal city (*ḥarīm*) to the south, a distance of some miles.⁷⁷ As Fernando Mediano writes about public rituals in the Islamic west, the punitive power of the state, inscribed on the bodies of the condemned, “must be exhibited publicly in the streets and proclaimed in the most frequented and visible places.” Thus, “evident to all, the mutilated bodies in and of themselves speak to the existing order and power relations.”⁷⁸

Chroniclers such as Ibn al-Athīr and Ibn al-Jawzī tend to write about public punishment in more detail than they do about punishments to which they had little or no access, such as those that took place in the ruler’s palace or before his throne in military tribunals. Public punishment is part of the stock repertoire of the chroniclers of the time. There are myriad reports about executions, floggings, ignominious parades, and acts of banishment or imprisonment. For social historians who are interested in the history not only of the governing élite, but also of the less powerful strata of society, this is both a blessing and a challenge. Public punishment may turn out to be one of the few available windows into the lives of common people in the Islamic Middle Ages. Therefore it deserves detailed attention. Before turning to the various types of public punishment in the Saljūq period (chapter 2), I shall review some of the legitimate institutions and social actors involved in the administration of penal justice.

Institutions of justice and the question of *maẓālim* under the Saljūqs

I began this chapter by outlining three different spheres in which punishment under the Saljūqs was enacted. A second strategy to grasp the complex reality of the social practice of punishment is to analyze the various law-enforcing agencies involved in the administration of penal justice. Unfortunately, the historical sources from the Saljūq period frequently specify *who* was punished and *how* this happened, but much less frequently is the reader told by *whom*. Who were the actors who decided upon punitive measures, and who was in charge of implementing punishment? In the following, I propose to discuss four such actors: the ruler, the judge (*qāḍī*), the police (*shihṅā*, *shurta*), and the market-inspector (*muḥtasib*).⁷⁹ To what extent were they involved in

⁷⁷ See LeStrange, *Baghdad During the Abbasid Caliphate*, 274, 296.

⁷⁸ Fernando Rodríguez Mediano, “Justice, crime et châtement au Maroc au 16e siècle,” *Annales: Histoire, Sciences Sociales* 51, 3 (1996), 616.

⁷⁹ It is not my goal to rewrite the history of Saljūq administration here. A number of works, conveniently available for the purpose of a general overview, deal with the organization of the political apparatus in Persia and Iraq in the fifth/eleventh and sixth/twelfth centuries. See Lambton, “Contributions to the Study of Seljuq Institutions” (Ph.D. dissertation, University of London, 1939); Lambton, “The Internal Structure of the Seljuq Empire,” in *CHI5*, 203–83; Lambton, “The Administration of Sanjar’s Empire”; Heribert Horst, *Die Staatsverwaltung der Grosselghuken und Hōrazmshāhs* (Wiesbaden: Franz Steiner, 1964); and Morgan, *Medieval Persia*,

the social mechanism of punishment, and what strategies were devised to justify their authority?

The ruler's personal involvement in punishment was characterized by a high degree of informality, especially when he punished within the confines of the courtly milieu. As for acts of justice situated within the public framework, Nizām al-Mulk and other authors of the mirror-for-princes genre emphatically recommended upholding the tradition of the so-called *mazālim* ("Boards of Grievances"), which granted commoners direct access to the ruler.⁸⁰ According to the Baghdādī jurist Abū l-Ḥasan 'Alī al-Māwardī (d. 450/1058), the most important medieval theorist of the institution, the *mazālim* court was to redress abuses of power by government officials and to enforce the *qāḍī*'s decisions. Procedural standards, especially the rules of evidence, were laxer than in the *qāḍī* court, allowing the ruler to follow the dictates of the *raison d'état* rather than *sharī'a* law.⁸¹ It was in Saljūq times that the concept of political expediency became prominent in the writings of jurists and political theorists.⁸² It is therefore tempting to think that *mazālim* tribunals must have proliferated, as indeed has been suggested.⁸³

However, references to *mazālim* courts under the direct supervision of the ruler are rare; this applies equally to the caliphs in Baghdad and to the Saljūq sultāns.⁸⁴ Shayzarī, writing in the second half of the sixth/twelfth century,

esp. 25–50. On the office of the vizier, see Klausner, *The Seljuk Vizirate*. For the western Saljūqs, see Axel Havemann, *Rī'āsa and Qaḍā': Institutionen als Ausdruck wechselnder Machtverhältnisse in syrischen Städten vom 10. bis zum 12. Jahrhundert* (Freiburg: K. Schwarz, 1975).

⁸⁰ Abū 'Alī al-Ḥasan b. 'Alī b. Ishāq Nizām al-Mulk, *Siyāsatnāma* (Tehran: Bungāh-i Tarjama ū Nashr-i Kitāb, 1962), 19–28; anon., *Baḥr al-fawā'id* (Tehran: Bungāh-i Tarjama ū Nashr-i Kitāb, 1966), 430; Ghazālī, *Naṣīhat al-mulūk* (translated by F. R. C. Bagley; London: Oxford University Press, 1964), 29, 69, 70, 92–3, 102; Ibn Ḥamdūn, *Tadhkira*, I, 347, 251; 'Abd al-Rahmān b. Naṣr al-Shayzarī, *al-Minhaj al-maslūk fī siyāsat al-mulūk* (al-Zarqā': Maktabat al-Manār, 1407/1987), 562; Naṣir al-Dīn Muḥammad b. Muḥammad al-Ṭūsī, *Akhlaq-i Nāṣiri* (translated by George M. Wickens; London: George Allen, 1964), 233. See also the stories in Abū l-Majd Majdūd b. Adam Sanā'ī, *Ḥadiqat al-ḥaqīqa wa-ṭariqat al-sharā'if* (Tehran: Sipīr, 1329/[1950]), 561–2 (about Nūshirwān); Sadīd al-Dīn Muḥammad 'Awfī, *Jawāmi' al-ḥikāyat* ([Tehran]: Amīr Kabīr, 1352/[1973]), 85. See Leder, "Aspekte arabischer und persischer Fürstenspiegel," 146. For an analysis of *mazālim* justice under the Mamlūks, see Jorgen S. Nielsen, *Secular Justice in an Islamic State: Mazālim Under the Bahri Mamlūks 662/1264–789/1387* (Leiden: Nederlands Historisch-Archaeologisch Instituut te Istanbul, 1985). On the whole, Nielsen doubts that the *mazālim* court was an efficient tool of social justice, since it depended too much on the ruling classes' own interests. See *ibid.*, 138.

⁸¹ Māwardī, *al-Aḥkām al-sultāniyya* (ed. [1978]), 86–108. See Henry F. Amedroz, "The Mazalim Jurisdiction in the Aḥkam Sultaniyya of Mawardi," *JRAS* (1911), 637–41; Erwin Gräff, "Probleme der Todesstrafe im Islam," *Zeitschrift für vergleichende Rechtswissenschaften* 59 (1957), 113–15; *EI2*, s.v. Mazālim, VI, 934a (J. S. Nielsen).

⁸² For the concept of *siyāsa* during the Saljūq period, see pp. 47–8, 180–1, 236.

⁸³ Ephrat, *A Learned Society*, 127, states that "[u]nder the Great Seljuks there was a general trend of extending the *mazalim*'s jurisdiction at the expense of the *sharī'i* [sic] courts."

⁸⁴ Tuḡhril held a *mazālim* court at Nishāpūr in 429/1038, and Malikshāh allegedly punished one of his *ghulāms* after an old woman had complained to him that the *ghulam* had stolen her cow. See Lambton, "Contributions," 64. The story is also reported in Rashīd al-Dīn's (d. 718/1318) *Jāmi' al-tawārīkh* and is perhaps a trope. Sanā'ī, *Ḥadiqat al-ḥaqīqa*, 557–61, relates a similar story of *mazālim* justice under Maḥmūd of Ghazna. See also 'Abd al-Rahmān b. Aḥmad Jāmi,

states that the caliph Muhtadī (d. 256/870) was the last ruler to preside over *maẓālim*. With the arrival of the Turkish sultāns, Shayzarī asserts, *maẓālim* was delegated to the viziers, until Nūr al-Dīn b. Zankī (d. 565/1174) reinstated the court at Damascus.⁸⁵ In a similar vein, Lambton has suggested that *maẓālim* under the Saljūqs increasingly became a function of the vizier.⁸⁶

However, one does not hear much about *maẓālim* courts held by viziers or other high-ranking government officials either.⁸⁷ Perhaps the attitudes and mores of governance were not conducive to the practice. As Patricia Crone acidly remarks about Niẓām al-Mulk, “he did not actually like all these uncouth people crowding the streets around the *maẓālim* court: it did not look good that there should be so many complainants.”⁸⁸ In his *Siyāsatnāma*, the vizier recommended that “the doors must be closed to such crowds.”⁸⁹ However, from this statement one can also infer that in fact there *were* crowds at the palace gate of the Saljūq sultān at Iṣfahān, and that they had hopes for direct access to their ruler. On the other hand, the quotation clearly indicates the ruling classes’ dislike of meddlesome subjects. Contempt for the common people ran deep; they were denied the right and the capacity to question the ruler’s exercise of justice. As the poet Sanā’ī (d. 525/1131) wrote, “commoners do not know tyranny from the common good [*sitam az maṣlahat nadānad ‘āmm*].”⁹⁰ More bluntly put, as in a proverb that is quoted in the mirror-of-princes tradition, “commoners are like cattle [*al-‘awāmm ka-l-an‘ām*].”⁹¹ Perhaps the closest Saljūq sultāns came to the kind of *maẓālim* court envisaged by Māwardī were the self-aggrandizing military tribunals of rulers such as Sanjar, “half brutal power and half theatre” in the words of Crone.⁹²

Mathnawī-yi haft awrang (Tehran: Kitābfurūshī Sa’dī, 1337/[1958]), 272–4, for yet another version of the same story, this time with sultān Sanjar as the hero. The chronicler Rāwandī writes that one of the four persons ensuring the stability of the kingdom is the *ṣāhib diwān*, “who obtains justice for the oppressed from the oppressor and for the weak from the strong,” but this statement is prescriptive rather than descriptive. See Lambton, “Changing Concepts of Justice,” 45.

⁸⁵ Shayzarī, *al-Minhaj al-maslūk*, 566. See Adam Mez, *The Renaissance of Islam* (1922, London: Luzac, 1937), 233.

⁸⁶ Lambton, “The Internal Structure,” 227.

⁸⁷ In the tenth, twenty-third, twenty-sixth, and thirty-eighth of Ḥarīrī’s *maqāmas*, commoners plead their case with the local governor in Rayy and Raḥba. See Abū Muḥammad al-Qāsim b. ‘Alī al-Ḥarīrī, *Maqāmāt* (translated by Theodore Preston; 1850, repr. London: Darf Publishers, 1986), 299; Shirley Guthrie, *Arab Social Life in the Middle Ages: An Illustrated Guide* (London: Saqi Books, 1995), 62. It would appear that the *ṣūfi* and *faqīh* ‘Ayn al-Quḍāt (d. 525/1131) was sentenced to death in the *maẓālim* court of the Saljūq vizier Darguzīnī (d. 527/1133). Subkī, in his *Ṭabaqāt al-shāfi‘iyya*, calls this court a *maḥḍar*. See Safi, *The Politics of Knowledge*, 198. Juwaynī, *‘Atabat al-kataba*, 20, mentions a *diwān-i maẓālim* of the governor of Jurjān which was presided over, not by the governor himself, but by one of his delegates.

⁸⁸ Patricia Crone, *God’s Rule: Government and Islam* (New York: Columbia University Press, 2004), 161.

⁸⁹ Niẓām al-Mulk, *Siyāsatnāma*, 301. ⁹⁰ Sanā’ī, *Ḥadiqat al-ḥaqīqa*, 567.

⁹¹ ‘Alī b. Abī Khafṣ b. al-Faqīh Muḥammad al-Iṣfahānī, *Tuhfat al-mulūk* (Tehran: Mirāth-i Maktūb, 1382/2003), 17. According to Yūsuf Khāṣṣ Ḥājib, *Kutadgu Bilig* (tr. Dankoff), 180, the commoners were worthless, vulgar, and only interested in filling their bellies.

⁹² Crone, *God’s Rule*, 163.

The ideology of siyāsa

At least in practice, then, the lack of an institutional and procedural framework that could have regulated the sultān's use of punishment seems to have extended from the private into the public realm. Punishment by the ruler or by his immediate delegates, the *amīrs*, was fundamentally arbitrary, informal, and unpredictable. Those, however, were not exactly the terms in which the educated élite phrased things. For the ideologues of the Saljūq state, swift and harsh punishment was what the ruler was *supposed* to impose.⁹³ This idea is embodied in the concept of *siyāsa* (Pers. *siyāsāt*). In early Islam, *siyāsa* simply meant “statecraft,” or “management of the polity.”⁹⁴ From the fourth/tenth century onwards, however, the narrowly penal meaning of the term as *punishment* emerged,⁹⁵ and was in full swing in the Saljūq period.⁹⁶ When Nizām al-Mulk talks about the commander of the police forces (*amīr-i ḥaras*), whose job is to decapitate, maim, gibbet, flog, or imprison people, he stresses his importance above all other offices “because his office relates to punishment [*shughl-i ū bi-siyāsāt ta'alluq dārad*].”⁹⁷ The double meaning of the title of Nizām al-Mulk's work – *Siyāsāt-nāma* can be rendered both as “Book of Government” and “Book of Punishment” – is perhaps not entirely unintentional.

The poet Anvarī, who also uses the term *siyāsāt* in the meaning of “punishment,”⁹⁸ praises his royal patron's ability to spread terror by using his *siyāsāt*, making the sky, stars, and even death itself tremble.⁹⁹ The rationale he proposes for the ruler's *siyāsāt* is as follows:

The wolf will not attack the ewe in the desert
the partridge will not flee the hawk in its flight;
all creatures retract their claws for fear of punishment,
be it a lion's paw or the claws of a hawk.

⁹³ See Lambton, “Changing Concepts of Justice,” 35–8, 59.

⁹⁴ Bernard Lewis, “Siyāsa,” in A. H. Green (ed.), *In Quest of an Islamic Humanism: Arabic and Islamic Studies in Memory of Mohamed al-Nowaihi* (Cairo: American University of Cairo Press, 1984), 4. This broad meaning did not disappear. See Ibn Ḥamdūn, *Tadhkira*, I, 291. For the specifically legal import of the concept of *siyāsa*, cf. pp. 180–1, 223, 235–6, 242.

⁹⁵ Lewis, “Siyāsa,” 7.

⁹⁶ For *siyāsāt farmūdan* in the meaning of “to order the execution of someone,” see anon., *Mujmal al-tawārikh*, 411.

⁹⁷ Nizām al-Mulk, *Siyāsāt-nāma*, 172.

⁹⁸ Awḥad al-Dīn Mūhammad b. Muḥammad Anvarī, *Dīwān* (Tehran: Bungāh-i Tarjama ū Nashr-i Kitāb, 1337–40/[1959–61]), 281.10: “bā man-i ‘ājiz chi siyāsāt ū chi nikāl?” I think that also Kaykā'ūs b. Iskandar, *Qābūs-nāma*, 55, uses *siyāsāt* in the meaning of “punishment”: “dar ‘adl ū siyāsāt.” This follows an injunction not to neglect (*taqṣīr nakun*) “rightful bloodshed.” See ‘Awfī (fl. 620/1223), *Jawāmi‘ al-ḥikāyāt*, 179, where a courtier says to the king: “If I were in your place, I would punish [execute?] him [*ū-rā siyāsāt kardī!*]”

⁹⁹ Anvarī, *Dīwān*, 120.1–2; 136.2. The anonymous author of the *Bahr al-fawā'id*, also, states that the ability to inspire terror is a crucial attribute of kings. See Lambton, “Islamic Mirrors for Princes,” 434. For this view, see also Nizām al-Mulk, quoted in Lambton, “The Dilemma of Government in Islamic Persia,” 57.

*Gurg bā mēsh ta'addī nakunad dar šahrā,
tīhū az bāz tahāshī nakunad dar parwāz;
chang dar sar kashad az bīm-i siyāsāt chū kashaf,
chī ki dar panja-yi shūr wa-chi ki dar mikhlab-i bāz.*¹⁰⁰

As Fedwa Malti-Douglas comments, “a reputation for undue severity is good for the order of the state.”¹⁰¹ The sentiment that only a ruler who inspires fear will keep the lands pacified is echoed widely in Saljūq courtly literature. Were it not for punishment, “men would devour one another.”¹⁰² This is because “people are wicked” and, “with wicked people, things cannot be put right through tolerance and indulgence.”¹⁰³ Therefore, the ruler is called “not to neglect rightful bloodshed, because the common good depends on it [*salāh dar ān basta dārad*].”¹⁰⁴ A ruler must discipline his subjects by “leading the bodies of his people toward obedience in their hearts [*qāda abdāna l-ra'īyya ilā l-tā'atihi bi-qulūbihim*].”¹⁰⁵ In the old days, according to Ghazālī, it was enough for a ruler like ‘Umar b. al-Khaṭṭāb to carry a simple whip on his shoulder to deter people from evil actions. However, “the sultāns of today must rely on punishment [*siyāsāt*] and awe [*haybat*].”¹⁰⁶ “Awe” or “dread” (*haybat*), in the words of Roy Mottahedeh, was a salutary quality “which surrounded kingly authority by virtue of its threat of coercion.”¹⁰⁷ Qushayrī (d. 465/1072) speaks of *hayba* in terms of a loss of self-consciousness, as when one enters into the presence of a powerful potentate and afterwards is unable to remember any of the particulars of the audience.¹⁰⁸ As a deed of investiture in the collection of late Saljūq chancery documents known as ‘*Atabat al-kataba*’ puts it, “the awe toward the king rests on the execution of punishment [*mahābat-i pādshāhī dar imzā-yi hukm-i siyāsāt-ast*].”¹⁰⁹ The overwhelming persuasive power of public punishment left no doubt about the ruler’s legitimacy.

¹⁰⁰ Anvarī, *Dīwān*, 256.7–8. See *ibid.*, 305.9.

¹⁰¹ Fedwa Malti-Douglas, “Texts and Tortures: The Reign of al-Mu’taḍid and the Construction of Historical Meaning,” *Arabica* 46 (1999), 334.

¹⁰² Anon., *Bahr al-fawā'id* (tr. Meisami), 96. Similar statements can be found in Ibn Ḥamdūn, *Tadhkira*, I, 292; Kaykā'ūs b. Iskandar, *Qābūs-nāma*, 10.

¹⁰³ Ghazālī, *Naṣīhat al-mulūk*, 148.

¹⁰⁴ Kaykā'ūs b. Iskandar, *Qābūs-nāma*, 55. See Sanā'ī, *Ḥadiqat al-ḥaqīqa*, 556, who likens death and destruction wrought by the king to “life-bestowing rain.”

¹⁰⁵ Ibn Ḥamdūn, *Tadhkira*, 295.

¹⁰⁶ Ghazālī, *Naṣīhat al-mulūk*, 148. See anon., *Bahr al-fawā'id* (tr. Meisami), 296; Lambton, *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory* (Oxford: Oxford University Press, 1981), 124. Awe (*haybat*) vis-à-vis the king was in large measure a function of his royal charisma, or aura (*farr*). It is telling that *farr*, like *siyāsa*, developed the secondary meaning of “punishment.” However, this meaning of *farr* is not very common and may be a late development. See *LN*, s.v. *farr*, referring to a nineteenth-century dictionary, the *Nāẓim al-aṭībā'*; Francis J. Steingass, *A Comprehensive Persian-English Dictionary* (1892, London: K. Paul, Trench, Trubner & Co., 1930), s.v. *farr*.

¹⁰⁷ Mottahedeh, *Loyalty and Leadership*, 185.

¹⁰⁸ Abū l-Qāsim ‘Abd al-Karīm al-Qushayrī, *al-Risāla al-Qushayriyya* (Beirut: al-Maktaba al-‘Aṣriyya, 2005), 68.

¹⁰⁹ Juwaynī, ‘*Atabat al-kataba*, 20.

It should be noted that in the Persian tradition of royal advice literature, there is a measure of criticism of excessive punishment.¹¹⁰ In general, however, this criticism is restricted to predictions about the punishment of the ruler in the hereafter.¹¹¹ As for those unjustly punished, an attitude of quietism is strongly encouraged, as in general rebellion against tyrannical rulers is condemned.¹¹² Sanā'ī, in one of the stories in his “Garden of Truths” (*Ḥadīqat al-ḥaqīqa*), applauds an act of justice of Maḥmūd of Ghazna, who allegedly had five of his soldiers gibbeted for stealing a basket full of raisins from an old woman.¹¹³ Stories such as this illustrate the shock-and-awe ideology of *siyāsāt*: extreme punishments, at least according to those seeking the patronage of the powerful, were simply extreme acts of justice. They were necessary from time to time, and could not cast doubt on the view that “everything is really alright”¹¹⁴ with the way rulers punish.

Punishment by the judge

As has been pointed out by a number of scholars of Islamic law, from early on, the normative literature on the office of the Islamic judge (*qāḍī*) was to a large extent cut off from historical realities.¹¹⁵ It is true that the genre of *adab*

¹¹⁰ For example, see anon., *Baḥr al-fawā'id* (tr. Meisami), 299; Kaykā'ūs b. Iskandar, *Qābūs-nāma*, 86: “bar khayra 'uqūbat ma-kun”; Lambton, “Changing Concepts of Justice,” 30. Rather outspoken in his criticism is Ibn Ḥamdūn, *Tadhkira*, 305–6. The passage may help to explain why it is assumed that he was imprisoned on account of his writings. See *EI2*, s.v. Ibn Ḥamdūn, III, 784a (F. Rosenthal). Even panegyric poetry, on close inspection, reveals didactic elements working toward reform of the ruler's habits. See Julie Scott Meisami, *Medieval Persian Court Poetry* (Princeton: Princeton University Press, 1987), 305. Another incarnation of the story is the one preserved in Niẓāmī's *Makhzan al-asrār*, with Sanjar as hero. His encounter with an old widow inspired a series of Persian illustrations. See Michael Barry, *Figurative Art in Medieval Islam and the Riddle of Bīzhād of Herat (1465–1535)* (Paris: Flammarion, 2004), 74–7.

¹¹¹ Kaykā'ūs b. Iskandar, *Qābūs-nāma*, 55; Ghazālī, *Naṣīḥat al-mulūk* (tr. Bagley), 15–17, 19, 21, 29, 30; Iṣfahānī, *Tuḥfat al-mulūk*, 70. See the threats in Sanā'ī, *Ḥadīqat al-ḥaqīqa*, 553, 566; Ḥarīrī, *Maqāmāt* (tr. Preston), 295, 303.

¹¹² Ghazālī, *Naṣīḥat al-mulūk* (tr. Bagley), 45, 104; Iṣfahānī, *Tuḥfat al-mulūk*, 86. See also Sanā'ī, *Ḥadīqat al-ḥaqīqa*, 567; the sermon at Rayy in Ḥarīrī, *Maqāmāt* (tr. Preston), 301. See Crone, *God's Rule*, 155; Lambton, “Islamic Mirrors for Princes,” 424, 430. For a fundamental reassessment of this proposition, however, see Khaled M. Abou El Fadl, *Rebellion and Violence in Islamic Law* (New York: Cambridge University Press, 2001). I do not see my work as contradicting Abou El Fadl's careful and nuanced study, as I am talking here about literature that was written for an audience constituting primarily those in positions of political power. For the notion that the jurists' discourse could at times subvert state power, see part III of this study.

¹¹³ Sanā'ī, *Ḥadīqat al-ḥaqīqa*, 554–7. For similar stories, see Tanūkhī, *Nishwār al-muḥāḍara* (tr. Margoliouth), 174 (the caliph Mu'taḍid has a trooper flogged for stealing a melon from an old woman); Kaykā'ūs b. Iskandar, *Qābūs-nāma*, 133 (Maḥmūd of Ghazna gibbets the governor of Farāwa because of the complaint of an old woman).

¹¹⁴ Cf. Crone, *God's Rule*, 160; Malti-Douglas, “Texts and Tortures,” 333–6.

¹¹⁵ For example, Noel J. Coulson has drawn attention to the “detached idealism” of the Muslim theorists of the office of the *qāḍī*, especially in the field of public law. See his *History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 82. That this was especially true in

al-qāḍī (“Etiquette of the Judge”), whose foundational text is that of Khaṣṣāf (d. 261/874), largely ignores the existence of state-run judicial bodies such as *mazālim*, *shurṭa*, or *ḥisba*. Instead, it portrays the judge as if he were the one and only institution around which legal practice revolved, in both civil and criminal matters.¹¹⁶ In theory it was claimed that the *qāḍī* was completely autonomous in his exercise of justice, and responsible only to God. Ghazālī famously stated that the *qāḍī* was subordinate only to *sharīʿa*, but not to the caliph or any other ruler.¹¹⁷

While Ghazālī’s claim may appear overly optimistic, there can be little doubt that *qāḍīs* did play a certain role in the administration of punishment under the Saljuqs.¹¹⁸ True, procedural limitations largely deprived the *qāḍī* of the power to prosecute and punish crimes.¹¹⁹ However, the government’s direct jurisdiction over criminal cases was hardly exclusive.¹²⁰ The chronicles cite a number of instances where *qāḍīs* were involved, in one way or another, in the penal process. When an apostate was stoned around 475/1082 at Marv, among the first to throw stones was the local judge.¹²¹ One hears of a *qāḍī* in

the field of criminal law and prosecution is pointed out by Brunschvig, “Considérations sociologiques sur le droit musulman ancien,” in Brunschvig, *Études d’Islamologie* (Paris: G.-P. Maisonneuve et Larose, 1976), II, 119.

¹¹⁶ Irene Schneider, *Das Bild des Richters in der “adab al-qāḍī”-Literatur* (Frankfurt: P. Lang, 1990), 243. See Muhammad Khalid Masud, Rudolph Peters, and David Powers, “Qāḍīs and Their Courts: An Historical Survey,” in Masud, Peters, and Powers (eds.), *Dispensing Justice in Islam: Qadis and Their Judgments* (Leiden: Brill, 2006), 13, 16–17, 19.

¹¹⁷ Klausner, *The Seljuq Vezirate*, 24.

¹¹⁸ See Lambton, “The Internal Structure of the Saljuq Empire,” 269–72.

¹¹⁹ Baber Johansen, “Zum Prozessrecht der ‘Uqūbāt,” in Johansen, *Contingency in a Sacred Law* (Leiden: Brill, 1999), 421–33. It has been argued that the law of the *ḥudūd*, in theory the *qāḍī*’s province, was such that one could be punished with them only in an act of voluntary expiation but not as the result of any external pressure. See Johann Kresmárik, “Beiträge zur Beleuchtung des islamitischen Strafrechts mit Rücksicht auf Theorie und Praxis in der Türkei,” *ZDMG* 58 (1904), 106; Johansen concurs: “Eigentum, Familie und Obrigkeit,” 46. See also Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2005), 54, who enumerates three reasons why *ḥadd* offenses are difficult to prosecute: (1) rules of evidence for proving *ḥadd* offenses are extremely strict; (2) there are extensive opportunities to use the notion of uncertainty (*shubha*) as a defense; (3) *ḥadd* offenses are usually defined very narrowly. Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 333, argues that *ḥadd* norms are simply rhetorical devices: their primary function is to remind the community of the seriousness of the offense (especially as regards theft and fornication).

¹²⁰ This is also pointed out by Masud, Peters, and Powers, “Qāḍīs and Their Courts,” 12.

¹²¹ Albert L. Iskandar, “A Doctor’s Book on Zoology: al-Marwazī’s *Tabār al-Ḥayawān* (Nature of Animals) Reassessed,” *Oriens* 27–8 (1981), 279–80. The name of the judge, unfortunately, is given only as “Abū Muḥammad.” The Hanafites hold that the witnesses must throw the first stone if the punishment is based on their testimony; if the conviction is based on confession, this must be done by the head of the state or his representative, the *qāḍī*. See Peters, *Crime and Punishment*, 37. It appears that the Hanafis had occupied the post of *qāḍī* in Marv since as early as the second/eighth century. See Halm, *Ausbreitung*, 83. The *qāḍī* around 480/1087 was Abū Zayd ‘Abd al-Raḥīm b. ‘Abd al-Salām (d. 484/1091): *ibid.*, 89. Maṣṣūr b. Muḥammad al-Sam‘ānī, a Hanafī from Marv who converted to Shāfi‘ism in 468/1075–6, had a son called Muḥammad (d. 515/1121) who later became the director of the Niẓāmiyya in Marv, but Maṣṣūr’s *kunya* is usually given as Abū l-Muzaffar, not Abū Muḥammad: *ibid.*, 85–6.

Baghdad who had “established certain facts that necessitated that a man’s blood be shed, and he judged him to be an apostate.”¹²² Leading *faqīhs* from Hamadhān were (in)famously involved in the trial and execution of ‘Ayn al-Quḍāt al-Hamadhānī (d. 525/1131), who was a respected scholar and, incidentally, a *qāḍī* himself.¹²³ In Baghdad, executions, whether as a talionic punishment (*qiṣās*) or as a “divinely ordained punishment [*ḥadd*]” against criminals and apostates, sometimes took place in the Great Mosque’s courtyard (*rahba*).¹²⁴ This was traditionally the seat of the *qāḍī*, at least according to the Ḥanafī school of law, which suggests that a *qāḍī* supervised these executions.¹²⁵ There is some credibility, then, in the statement by Niẓām al-Mulk that *qāḍīs* have “authority over the blood and the money of the Muslims,” which is why the ruler must be careful whom to appoint to the position.¹²⁶

At the same time, however, one cannot deny the *qāḍī*’s dependence on the Saljūq ruler. Niẓām al-Mulk bluntly stated that the sultān can appoint or dismiss judges, who are his “deputies [*nāyibān*],” at will.¹²⁷ *Qāḍīs* were patronized by the temporal rulers more than in the purely financial sense of the term. This is illustrated, *inter alia*, by that fact that the old reluctance to accept the appointment as *qāḍī* survived into Saljūq times.¹²⁸ The jurists were

¹²² Ibn al-Jawzī, *Muntaẓam*, XVII, 49.

¹²³ For the political background to ‘Ayn al-Quḍāt’s execution, see Dabashi, *Truth and Narrative*, 475–526, esp. 498–9.

¹²⁴ Ibn al-Jawzī, *Muntaẓam*, XVII, 76, 307, 310, XVIII, 159.

¹²⁵ See Mez, *Renaissance*, 224. Emile Tyan, *Histoire de l’organisation judiciaire en pays d’Islam* (1938, Leiden: Brill, 1960), 276, points out that repressive measures could be taken by the *qāḍī* inside the mosque, as evidenced by the *qāḍī* Ibn al-Munqadir (212/827–214/829). Against the Ḥanafīs, the Shāfi‘īs rejected this notion and instead recommended that the *qāḍī* ought to hold court in the middle of the town so that people could reach him easily. See Māwardī, *Adab* (tr. Schneider), 20; Shayzarī, *Nihāyat al-rutba fī ṭalab al-ḥisba* (Cairo: Maṭba‘at Lajnat al-Ta’līf wa-l-Tarjama wa-l-Naṣr, 1365/1946), 115. For the Ḥanafīs (Kāsānī, Sarakhṣī, Marghinānī, et al.), see Schneider, *Das Bild des Richters*, 50–60. In addition, ‘Umar b. ‘Abd al-‘Azīz al-Bukhārī, the Transoxanian jurist who died fighting on Sanjar’s side in the battle of Qatwān in 536/1141, in his commentary on Khaṣṣāf’s (d. 261/875) influential *K. Adab al-qāḍī*, believed the Ḥanafīs’ position to be the correct one. See Khaṣṣāf Abū Bakr Aḥmad b. ‘Umar, *Adab al-qāḍī*, with Bukhārī’s commentary (translated by Munīr Aḥmad Mughal; Lahore: Kazi Publications, 1999), I, 156–60. In fifth-/eleventh-century Baghdad, Ḥanafīs predominated in the office of *qāḍī*, even though the numbers at our disposal are, from a statistical point of view, not overly significant: Ephrat, *A Learned Society*, 129–30, counts fifteen Ḥanafī judges, thirteen Ḥanbalīs, seven Shāfi‘īs, and one Mālikī. However, if a certain continuity of the Ḥanafī judgeship into the sixth/twelfth century is assumed, it seems very likely that *shar‘ī* courts under the Saljūqs did indeed take place in the mosque.

¹²⁶ Niẓām al-Mulk, *Siyāsatnāma*, 53.

¹²⁷ *Ibid.*, 51, 56. The *Siyāsatnāma* also offers stories about unjust *qāḍīs* who are punished by the king. See Lambton, “The Dilemma of Government in Islamic Persia,” 59.

¹²⁸ For the topos of jurists unwilling to become *qāḍī*, see Mez, *Renaissance*, 217–20; Masud, Peters, and Powers, “Qāḍīs and Their Courts,” 10–11. Ghazālī, for instance, criticized the learned scholars for accepting judicial posts. See Ephrat, *A Learned Society*, 133–4. See also the warnings against the office of *qāḍā* in Bukhārī’s (d. 536/1141) commentary on Khaṣṣāf’s (d. 261/875) *Adab al-qāḍī* (tr. Mughal), I, 22. Bukhārī’s warnings, however, result from a somewhat different concern: for him, the *qāḍī*’s proneness to error in judgment represents a danger that is better avoided. For a summary of second-/eighth-century jurists refusing the office, see Hallaq, *The Origins and Evolution of Islamic Law*, 180–1.

acutely aware that the judgeship was severely hindered by the conditions of political rule. The fact is that *qāḍī*s were appointed and paid by the sultān and, while in theory the *qāḍī* could claim jurisdiction at least over *ḥadd* and talionic punishments,¹²⁹ in practice it is uncertain that he retained this prerogative in face of the *de facto* power of the ruler and his delegates.

Further light may be thrown on this issue by an analysis of the surviving appointment deeds from the Saljūq period. The documents of investiture in Juwaynī's secretarial collection, the '*Atabat al-kataba*, produced in the chancery of sultān Sanjar at Marv, indicate that Sanjar was in fact reluctant to grant the *qāḍī* any punitive power. The '*Atabat al-kataba* makes no reference to *ḥadd* punishments; nor does the *Dastūr-i dabīrī*, another secretarial work from the Saljūq period.¹³⁰ The same holds true for the pre-Saljūq documents analyzed by Schneider¹³¹ and the eighteen diplomas from the Saljūq and Khwārazmian periods collected by Horst.¹³² In the '*Atabat al-kataba*, the *qāḍī* is merely instructed to carry out his office according to the Qur'ān, the *sunna*, and the example of the early Muslims (*salaf*), but whether this included the prerogative to pass judgments on *ḥadd* cases is not clear.¹³³

No reference is made in these diplomas to the principle of *siyāsa* either. On the contrary, whereas the instructions to police prefects (*shihnas*), provincial governors (*āmils*), and market-inspectors abound with such references, the *qāḍī*'s authority is restricted explicitly to matters of the divine law (*umūr-i shar'ī*). From the sixth/twelfth century onwards, Islamic legal theory suggested that *qāḍī*s ought to judge according to principles of state expediency (*siyāsa*), and that a *qāḍī* could, for example, implement "discretionary punishment [*ta'zīr*]" as an agent of the state, not of the divine law.¹³⁴ This tendency coincided with Nizām al-Mulk's effort to restructure the *madrasa* system, which aimed to create structures of loyalty between the class of the religious

¹²⁹ See Henry F. Amedroz, "The Office of Kadi in the Ahkam Sultaniyya of Mawardi," *JRAS* (1910), 769.

¹³⁰ In one diploma from the '*Atabat al-kataba* a *qāḍī* is called to "prevent crimes," but this appears to be a function of the fact that he was also appointed as market-inspector (*muhtasib*), rather than on account of his being a *qāḍī*. See Juwaynī, '*Atabat al-kataba*, 52. The proto-document of investiture in Mīhānī's *Dastūr-i dabīrī*, 109–11, offers a fairly comprehensive list of the *qāḍī*'s duties (interestingly, he is encouraged to consult with the *ahl-i fatwā*) but, again, *ḥadd* is not mentioned. However, see *ibid.*, 114, where the *shihna* is enjoined to follow the "advice [*ishārat*]" of the *qāḍī* in *ḥadd* matters.

¹³¹ Schneider, *Das Bild des Richters*, 177–97.

¹³² Horst, *Die Staatsverwaltung*, 147–58. See Hasan Anvarī, *Iṣṭilāḥāt-i dīwānī-yi dawra-yi ghaznawī ū saljūqī* (Tehran: Kitābkhāna-yi Ṭahūrī, [1976]), s.v. *dīwān-i qaḍā*. Tyan, *Histoire*, 601, observes the same phenomenon with regard to Qalqashandī's *Subḥ al-a'shā*, in which Ayyūbid and early Mamlūk appointment diplomas are collected, as does Peters, *Crime and Punishment*, 11.

¹³³ Likewise, when a *qāḍī* in Nīshāpūr in the late fifth/eleventh century, Sadīd al-Quḍāt al-Ḥasan, is praised for protecting the people against "oppression [*ẓulm*] and inequity [*nāhamwārī*]," this statement may or may not indicate authority in criminal law matters. See Ibn Funduq, *Tārīkh-i Bayhaq*, 106.

¹³⁴ As Johansen has noted, the earliest occurrence of such a shift in legal theory is the work of the "late classical" author al-Marghinānī (d. 593/1197). See Johansen, "Eigentum, Familie und Obrigkeit," 54.

scholars (*ulamā'*) and the court administrators.¹³⁵ However, judging from the *ʿAtabat al-kataba*, it appears that, up until late Saljūq times, the *qāḍī* had little to do with *siyāsa* principles.

In conclusion, the debate as to what extent *qāḍīs* were involved in the administration of punishment remains unsettled.¹³⁶ Ibn Khaldūn noted that, in the course of Islamic history, the supervision of criminal torts had passed from the judges to non-religious functionaries.¹³⁷ Tyan, following Ibn Khaldūn, believed that the repressive jurisdiction, from an early time, was not in the hands of the *qāḍī* but, rather, that it fell exclusively under the authority of police officials such as the market-inspector or the urban police forces.¹³⁸ In as much as the Saljūq period is concerned, this is probably an exaggeration. The pendulum seems to have swung back somewhat in favor of the *qāḍī*. The best way to characterize the situation is perhaps to speak of a network of overlapping jurisdictions.¹³⁹ Within this network, there was room for some local variation and also for cooperation among the various jurisdictions. After all, the *qāḍī* always depended on the executive arm for the administration of punishment. The police prefect (*shihna*), for example, is called in one diploma of investiture to “strengthen the *sharīʿa* court” by bringing to justice those “stubborn people” who refused to appear in court.¹⁴⁰ A look at the offices of police (*shihna*) and market-inspector (*muḥtasib*) will further demonstrate this fact.

The police (*shihna*, *shurṭa*)

The *shihna* was, in the broadest sense, a police-prefect or inspector. His office claimed no religious legitimacy. Rather, he was an agent of *siyāsa*, the ruler’s sovereign punitive authority over his subjects. The *shihna*’s main

¹³⁵ Safī, *The Politics of Knowledge*, 96. Klausner, *The Seljuq Vezirate*, 62, argues that the Saljūq civil administration sought to link the institutions of government with those of religion through the *madrassa* system of education. More skeptical, however, is Ephrat, *A Learned Society*, 132 and passim.

¹³⁶ An avenue that remains to be explored is that of the biographical dictionaries, which I have not been able to consult systematically for this study. For the Shāfiʿīs, reference should be made to ʿAbd al-Wahhāb b. ʿAlī al-Subkī’s (d. 771/1370) *al-Ṭabaqāt al-kubrā*; for the Ḥanafīs: ʿAbd al-Qādir b. Muḥammad (d. 775/1373), *al-Jawāhir al-muḍḍāʿa*; Ibn Qutlūbughā (d. 879/1474), *Tāj al-tarājīm*; Kemāl Pashazāda (d. 940/1534), *Ṭabaqāt al-muḥtadidīn*. However, as Halm, *Ausbreitung*, 11, notes, the genre of *ṭabaqāt* is characterized by the near absence of biographical details. It remains to be seen, therefore, whether substantial information regarding *qāḍīs*’ involvement in the administration of punishment can be gained.

¹³⁷ ʿAbd al-Raḥmān b. Muḥammad Ibn Khaldūn, *al-Muqaddīma* (translated by Franz Rosenthal; New York: Pantheon Books, 1958), I, 455–8.

¹³⁸ Tyan, *Histoire*, 603.

¹³⁹ Cf. my “Hisba and the Problem of Overlapping Jurisdictions: An Introduction to, and Translation of, the Hisba Diplomas in Qalqashandī’s *Ṣubḥ al-aʿshāʿ*,” *Harvard Middle Eastern and Islamic Review* 7 (2006), 85–107, where I offer an analysis of the network of jurisdictions in the early Mamluk period, viewed from the office of the market-inspector (*muḥtasib*).

¹⁴⁰ Mīhanī, *Dastūr-i dabīrī*, 114.

responsibility was to secure public safety and prosecute crime. “He must consider as his most important duty,” states one of the documents of investiture in the ‘*Atabat al-kataba*, “to ward off the evil undertakings of criminals from his district [*wilāyat*].”¹⁴¹ The term *shihna* in the Saljūq sources has multiple shades of meaning, as in fact the *shihna*’s duties differed considerably, to the extent that one should differentiate between at least two, or even more, types of *shihnas*.¹⁴² There were, first of all, *shihnas* in the sense of military governors of a city or a whole region.¹⁴³ However, their troopers were also called *shihna* (pl. *shihan*).¹⁴⁴ Therefore, a distinction ought to be made between *shihna*-governors, who were appointed by the central government, and local *shihna*-policemen, who were appointed indirectly.

The *shihna*-governor possessed considerable power and military force.¹⁴⁵ The ‘*Atabat al-kataba* enjoins the *shihna*-governor to protect the rights of the

¹⁴¹ Juwaynī, ‘*Atabat al-kataba*, 61.

¹⁴² See Lambton, “The Administration of Sanjar’s Empire,” 376, 380. Somewhat outside the scope of my interest here is the “*shihna* of the Turkomans.” This title refers to the overseer of Turkish tribesmen who pastured their herds in the uncultivated stretches of land between the urban centers of northeast Persia. See Morgan, *Medieval Persia*, 42. *Shihnas* who were appointed to control these tribes were faced with challenges different from those of the *shihnas* in the urban centers. They had to keep the Turkomans from committing crimes, rally them in the border regions in case of an attack from the outside, act as arbitrators between warring tribes, and collect taxes for pasturing (*huqūq-i marāʿī*) from them. See Juwaynī, ‘*Atabat al-kataba*, 82; Nishāpūrī, *Saljūqnāma*, 48; Rāwandī, *Rāhat al-ṣudūr*, 177. For the *shihna* of the Turkomans, see also Sergey G. Agadshyanow, *Der Staat der Seldschukiden und Mittelasien im 11. und 12. Jahrhundert* (Berlin: Schletzer, 1994), 282; Lambton, “The Administration of Sanjar’s Empire,” 381. The “*shihna* of the Turkomans” in the province of Balkh, Qumāj (appointed 548/1153–4), was also the province’s *wālī* and *muqtaʿ*. See Rāwandī, *Rāhat al-ṣudūr*, 177; Ibn al-Athīr, *Kāmil*, IX, 199. See *EI2*, s.v. *Shihna*, IX, 437a (A. K. S. Lambton). It does not appear, however, that the “*shihna* of the Turkomans” was usually identical with the governor of a province, let alone the fief-holder of a certain city or district. The “*shihna* of the Turkomans,” rather, is the exception to the type of *shihna*; his office may have come about during the decline of the Saljūq empire, when the nomadic Ghuzz became an increasing hazard to the central administration.

¹⁴³ Lambton, “The Administration of Sanjar’s Empire,” 381. The *shihna* of Baghdad was, for a variety of reasons, a special case. Military control over Baghdad, as the seat of the caliphate, was a key factor in the Saljūq princes’ struggle for rule over Iraq. Rival Saljūq claimants to the throne were eager to appoint *shihnas* to the city, who acted as their representative vis-à-vis the caliph. Thus, both Muḥammad and Barkyārūq, during their struggle for the sultanate around the turn of the century, were intermittently represented by *shihnas* in Baghdad. See Lambton, *Contributions*, 276, 282–3, 307. The *shihnas* working in the service of the Saljūq sultāns thus functioned less as crime fighters than as foreign military occupiers who harassed the caliph and oppressed the local population. See Ibn al-Athīr, *Kāmil*, X, 447–50; Ḥusaynī, *Zubdat al-tawārīkh* (ed. Iqbal), 97; *EI2*, s.v. al-Mustarshid, VII, 733a (C. Hillenbrand).

¹⁴⁴ Ibn al-Jawzī, *Muntaẓam*, XVII, 309–10.

¹⁴⁵ In 539/1144–5, when the Khwārazmshāh Atsiz rebelled against Sanjar, he raided the small town (*qaṣaba*) of Faryūmad and went through the lands plundering settlements. The head of the town (*raʿīs*) called the *amīr* ʾĪltut, the *shihna* of Nishāpūr, and ʾĪltut arrived with a contingent of horsemen and foot-soldiers, forcing the Khwārazmshāh to turn back. See Ibn Funduq, *Tārīkh-i Bayhaq*, 272. Under the Ghaznavid sultān Maḥmūd, the *shihna* of Rayy commanded over 200 horsemen, with which he controlled the city and its surroundings. See *LN*, s.v. *Shihna*, citing Bayhaqī, *Tārīkh-i Bayhaqī*, 453; *LN*, s.v. *shihna*. When driven out of

commoners (*‘amma*) and to make them “quiet and happy.”¹⁴⁶ He is to achieve the common good (*maṣlaḥa*) by dispensing justice and persecuting crimes:

He must impose fines for crimes [*urūsh-i jināyāt*] in proportion to the crimes and the financial capability [*yasār*] of the criminals. He must drive off and overcome the trespassers [*muta’addiyān*] and evil-doers [*muḥsidān*], and he must support and strengthen the good and noble. The implementation of the divinely ordained punishments [*ḥudūd*] against trespassers, thieves [*luṣūs*], and highway-robbers is necessary by the divine law, and is counted among the most important affairs of the [life of] Muslims, as God Exalted said: “The recompense of those who wage war against God and his messenger and strive after corruption in the land is that they are executed or crucified or have their hands and feet cut off on alternate sides or are banished from the land [Qur’ān 5:33].”¹⁴⁷

This passage from the *‘Atabat al-kataba* suggests that the *shihna*-governor was called to prosecute and punish crimes that ordinarily fell under the category of *ḥadd*.¹⁴⁸ It appears, then, that the *shihna*-governor’s power of jurisdiction at times overlapped with the traditional province of the *qāḍī*, as in fact the *‘Atabat al-kataba* tells the *shihna* to implement the commands both of *siyāsa* and *sharī‘a*.¹⁴⁹ The diploma contained in the *Dastūr-i dabīrī*, written in 575/1180, has it that the *shihna*-governor must implement the *ḥadd* punishments in as much as is decreed by *sharī‘a* and as the *qāḍī* advises (*ḥudūd-i kī sharī‘at farmāyad u qāḍī-yi nāhiyat ishārat kunad iqāmat kunad*).¹⁵⁰ Central to the argument is Qur’ān 5:33, the so-called Brigandage Verse (*āyat al-muḥāraba*). Also echoing this verse, another document instructs the *shihna*-governor to “banish from the land [*az ān nāhiyyat nafy kunad*]” an array of criminals, including those passing through the area (*mujtāzān*), soldiers (*lashkariyān*), travelers, gang members (*‘ayyārūn*), gypsies (*lūriyān*), and thieves (*duzdān*).¹⁵¹ The Qur’ānic term “banishment from the land [*nafy min al-arḍ*]” was interpreted by some, including the early Ḥanafī jurists, to refer to both banishment and imprisonment.¹⁵² In Balkh, in the first half of the sixth/twelfth

Khurāsān in 551/1156 by the Ghuzz, Sulaymānshāh, one of Sanjar’s sons, went on an odyssey through Persia and Iraq. When he reached Iṣfahān, the *shihna* of the city refused to grant him asylum, and Sulaymānshāh had to continue on to Baghdad. See Ibn al-Athīr, *Kāmil*, IX, 225.

¹⁴⁶ Juwaynī, *‘Atabat al-kataba*, 61.

¹⁴⁷ *Ibid.*, 79. For discussions of Qur’ān 5:33 and classical definitions of *ḥirāba* (“brigandage”) in the writings of Muslim jurists, see Abou El Fadl, *Rebellion and Violence*, 32, 51–3, 55–61, 131–5, passim; Sherman A. Jackson, “Domestic Terrorism in the Islamic Legal Tradition,” *Muslim World* 91 (2001), 295–303.

¹⁴⁸ For a discussion of legal categories of punishment, especially *ḥadd* and *ta’zīr*, see chs. 5 and 6.

¹⁴⁹ Juwaynī, *‘Atabat al-kataba*, 79. See also Mīhanī, *Dastūr-i dabīrī*, 114, where the *shihna* is authorized to punish all trespassers against the law (*shar‘*).

¹⁵⁰ Mīhanī, *Dastūr-i dabīrī*, 114.

¹⁵¹ Juwaynī, *‘Atabat al-kataba*, 61. The verb *nafy kardan* is also used *ibid.*, 79, where the *shihna* is called to banish people from their “hiding places” (*makāmin*) and “dwellings” (*amākin*).

¹⁵² Jackson, “Domestic Terrorism,” 300; Peters, *Crime and Punishment*, 58. See Aḥmad b. ‘Alī al-Jaṣṣāṣ, *Aḥkām al-Qur’ān* (Cairo: Dār al-Muṣṣaḥaf, [1965]), III, 59. For the punishments of banishment and imprisonment, cf. pp. 89–97.

century, there was a prison of the *shihna*-governor (*zindān-i shihna*),¹⁵³ and it seems possible that the *shihna*-governor was also in charge of the prison of thieves (*ḥabs al-luṣūs*) and the prison of crimes (*ḥabs al-jarā'im*) that existed in Baghdad around the same time.¹⁵⁴

Local governors such as the *ʿāmil* and the *raʿīs* could exert coercive functions not unlike the *shihna*-governor.¹⁵⁵ Decrees of investiture in the *ʿAtabat al-kataba* give both offices vast punitive prerogatives.¹⁵⁶ The *shihna*-governor's *raison d'être* was, first and foremost, to assure public security. It appears that at times he really achieved this. During civil unrest in Wāsiṭ in 495/1101, the *qāḍī* implored sultān Barkyārūq to send a *shihna*-governor to the town to reassure the people.¹⁵⁷ However, the functional overlap of *shihna*-governor, *ʿāmil*, and *raʿīs* in the *ʿAtabat al-kataba* also suggests something else, namely, that the punitive authority of governors in Sanjar's realm was personalized, rather than institutionalized.¹⁵⁸ To no small degree, this must have increased the feeling of arbitrariness and unpredictability of punishment among the population at large.

The *shihna*-policeman

As a rule, the *shihna*-governor delegated the prosecution of crime and administration of punishment to his troops, who acted as his deputies.¹⁵⁹ At Baghdad in the sixth/twelfth century, the *shihna*-policeman was sometimes also called *shurḫī*.¹⁶⁰ Further east, however, the term *shihna* appears to have

¹⁵³ Abū Bakr Ḥamid al-Dīn ʿUmar b. Maḥmūd al-Balkhī, *Maqāmāt-i Ḥamidī* (Tehran: Markaz-i Nashr-i Dānishgāhī, 1365/[1986–7]), 73.

¹⁵⁴ Ibn al-Jawzī, *Muntaẓam*, XVIII, 84. For punitive detention as a punishment, see pp. 89–94.

¹⁵⁵ See Lambton, "Contributions," 288; Lambton, "The Internal Structure of the Seljuq Empire," 279; Klausner, *The Seljuq Vezirate*, 21. According to Zamakhshari, the term *ʿamal-dār* is a synonym of *shihna*. See *LN*, s.v. *ʿamal-dār*. Mention should also be made of the title of an official called *ḥakim*. Under the Saljuqs, there was a *ḥakim* at Qazwin known to administer punishments. See Ḥamd Allāh Mustawfī al-Qazwīnī, *Tārīkh-i guẓida* (London: Luzac, 1910–), 841.

¹⁵⁶ Juwaynī, *ʿAtabat al-kataba*, 19, 25, 28–9. The documents refer, *inter alia*, to Qurʾān 5:33. See Lambton, "The Administration of Sanjar's Empire," 376, 386: "On one occasion while Ghazālī was *mudarris* of the Nizāmiyya *madrassa* at Nīshāpūr, to which post he was appointed in A.H. 499 [1105–6], the *raʿīs* of Khurāsān imprisoned a man who had secretly altered the text of two of Ghazālī's works and then attempted to get Ghazālī to sign the manuscripts in question, so that charges of unorthodoxy could be preferred against him" (*Makātib-i fārsī-yi Ghazālī bi-nām-i Fadā'il al-anām*, ed. ʿAbbās Iqbāl; 1954, Tehran: *Kitābkhāna-yi Sanā'i*, 1363/[1984], 11–12). See Ibn al-Jawzī, *Muntaẓam*, XVIII, 102, for the case of a particularly harsh *ʿāmil*.

¹⁵⁷ Lambton, "The Administration of Sanjar's Empire." ¹⁵⁸ See *ibid.*, 370.

¹⁵⁹ See Juwaynī, *ʿAtabat al-kataba*, 79, where Qumāj, the *shihna*-governor of Balkh, is enjoined to appoint a sagacious and experienced deputy to conduct the affairs of the *shihna*.

¹⁶⁰ Ibn al-Jawzī, *Muntaẓam*, XVII, 84. See also *ibid.*, 100: the caliph's vizier Abū l-Qāsim b. Jahīr instructs the *ṣāhib al-shurḫa* to tear down houses in West Baghdad. Perhaps this indicates that the policemen of the caliph continued to be called *shurḫa*, while those of the sultān went by the name of *shihān*. Tyan, who relied mostly on Egyptian chronicles, called *shurḫa* the "jurisdiction repressive" *tout court*. See his *Histoire*, 566; see also 576 fn. 1. See also Miḥanī, *Dastūr-i dabūrī*, 114, where the *shihna* is instructed to appoint *shurḫa*.

been more commonly used. For example, the chronicler Ibn Funduq¹⁶¹ and the poet Sanā'ī (d. c. 525/1131) mention *shih̄nas* of smaller towns in Khurāsān, but no *shur̄ṭīs*.¹⁶² In the urban context, *shih̄na*-troops are mentioned frequently, especially in connection with the *'ayyārūn*, criminal gangs who had developed from local militia with their own code of honor into bands of common thieves and ruffians.¹⁶³ In 497/1103–4, the *'ayyārūn* managed to occupy the whole western shore of the Tigris. The *shih̄na*-troops tried to push them back, but were defeated. The *'ayyārūn* then assaulted the poor of West Baghdad.¹⁶⁴ In the troubled years around the deaths of the caliphs Mustarshid and Rāshid, problems with the *'ayyārūn* in Baghdad reached unprecedented heights. The police forces opposed them vigorously, though their effort did not make the local population feel much better off. As Ibn al-Jawzī relates,

the wickedness [*fasād*] of the *'ayyārūn* increased. They brought destruction and bloodshed even to the Ṣafariyya quarter. They entered the shops of the cloth merchants, pressed them for gold, and threatened to kill them. Then the *shih̄na* of Baghdad was put in charge . . . To every quarter one *shih̄na* was assigned and stationed there over the people [*uqūma lahu nazhun 'alā al-nās*] of the quarter. They, however, cried out and said: "We have not been freed of the *'ayyārūn*!"¹⁶⁵

The *shih̄na*-policemen, however, were not only concerned with fighting the organized crime of ruffian bands; they also intervened in individual criminal acts. In 499/1105–6, a man of the Naṣariyya quarter killed his sister and her lover, whom he had found in her house. Then he fled. "The *shih̄na* rode out [*rakiba al-shih̄na*] and destroyed the quarter."¹⁶⁶ In other cases of murder and

¹⁶¹ Ibn Funduq, *Tārīkh-i Bayhaq*, 274.

¹⁶² Sanā'ī, *Ḥadiqat al-ḥaqīqa*, 561. But see Rāwandī, *Rāhat al-ṣudūr*, quoted in *LN*, s.v. *shur̄ṭān*, who speaks of the "head of the *shur̄ṭā*," an official whose troops were employed to fight against urban rioters. *LN*, s.v. *shur̄ṭā*, explains that the *shur̄ṭā* are the agents (*chāwūsh*) of the *shih̄na*, or his foot-soldiers (*piyāda-yi shih̄na*).

¹⁶³ Deborah Tor, "From Holy Warriors to Chivalric Order: The 'ayyārūn in the Eastern Islamic World, A.D. 800–1055" (Ph.D. dissertation, Harvard University, 2002), argues that the *'ayyārūn* under the Būyids were rigidly organized bands of men who followed a strict code of honor, and that their reputation as mere thieves and ruffians results from the one-sided portrayal in the chronicles written by members of the literary élite. However, in the Saljuq period, the *'ayyārūn*'s behavior seems to have degenerated, as is stated by Lambton, "Contributions," 339. See also Claude Cahen, "Mouvements populaires et autonomisme urbain dans l'Asie musulmane du moyen âge," *Arabica* 6 (1959), 42–3.

¹⁶⁴ Ibn al-Jawzī, *Muntaẓam*, XVII, 84. See also *ibid.*, XVII, 84: "The *shur̄ṭā* had left the western shore because the *'ayyārūn* had occupied it. The *shih̄na* was powerless against the *'ayyārūn*. None but the weak people fell into their hands, and they took from them, burned their houses . . . the people became angry with the *shih̄na* [*ta'adhdhā bi-l-shih̄na*]." Fights between the *'ayyārūn* and the *shih̄na*'s forces are also reported for the years 512/1118–19 (Ibn al-Athīr, *Kāmil*, VIII, 633) and 529/1134–5 (Ibn al-Jawzī, *Muntaẓam*, XVII, 296).

¹⁶⁵ Ibn al-Jawzī, *Muntaẓam*, XVII, 309–10. See Lambton, "Contributions," 280. The Ṣafariyya quarter was situated around the Bāb Ṣafariyya (or Bāb Khurāsān, the present-day Bāb al-Wuṣṭānī), northeast of the caliphal city in East Baghdad. See LeStrange, *Baghdad During the Abbasid Caliphate*, 281, 288.

¹⁶⁶ Ibn al-Jawzī, *Muntaẓam*, XVII, 99.

theft, the *shihna*'s agents prosecuted, imprisoned, and gibbeted criminals.¹⁶⁷ In 515/1121, the *shihna*-policemen mounted a major investigation, putting pressure even on some of the caliph's representatives:

In the month of Ṣafar [April], a dead body was found in Mukhtāra. The *shihna*'s troopers came and raided the quarter, searching for the harbinger [of the murderer] [*ḥāmī*]. He fled. The deputy of the *shihna*-governor came to the Gate of the Common People [*bāb al-ʿamma*] with a lot of troops showing heavy weaponry. He took charge of the house [*tawakkala bi-dār*] of Ibn Ṣadaqa the vizier, assigning ten [of his] people, and [likewise] the house of Ibn Ṭalḥa the treasurer and the house of the Chamberlain of the Palace Gate [*ḥājib al-bāb*] Ibn al-Ṣāḥib. He said: "I am prosecuting you for the crime perpetrated against the murder victim [*uṭālibukum bi-jināyati l-maqtūl*]." ¹⁶⁸

The Chamberlain of the Gate was the caliph's own police-prefect of sorts, especially after the caliph had begun to rid himself of the sulṭān's influence and regained a measure of autonomy in the urban administration. Around 520/1126, when the common people (*ʿawāmm*), during Mustarshid's battles with sulṭān Maḥmūd, plundered the houses of some of Maḥmūd's army commanders, the caliph sent out his Chamberlain of the Gate to arrest them and make them return the stolen goods.¹⁶⁹

The sources indicate that *shihna*-troops sometimes did not contribute to the safety of the common people but, rather, made their situation more difficult. Otherwise the documents in the *ʿAtabat al-kataba* would not warn the *shihna*-governor to choose his troops carefully: "No weak man shall experience terror or trouble through them, or run away from the horsemen [in the *shihna*'s service]." ¹⁷⁰ A late sixth-/twelfth-century diploma of investiture instructs the *shihna*-governor not to expose the privacy of Muslims to public ignominy on mere suspicion or based on acts of slander.¹⁷¹ Sanāʿī tells of a certain village *shihna* who acted tyrannically against the villagers and was duly punished by Maḥmūd of Ghazna.¹⁷² The *Tārīkh-i Bayhaq* reports the case of

¹⁶⁷ In 515/1121–2, a police agent (*maṣlahī*) was killed in the Mukhtāra quarter. The *shihna* had to ask the caliph *dīwān* for permission to arrest a number of suspects. As a further measure he then proceeded to close the mosque after evening prayer, "and nobody could get into them for the night prayer." See *ibid.*, XVII, 195. In 531/1136–7, "thousands of *dīnārs*" were stolen from a house in the Bāb al-ʿAzaj quarter in Baghdad. The neighbors denounced a number of suspicious persons, told the *shihna*, "and the *shihna* proceeded to arrest some of these people, crucified them on trunks of wood, and then took property from them." See *ibid.*, XVII, 324.

¹⁶⁸ *Ibid.*, XVII, 192–3. The Bāb al-ʿamma ("Public Gate") was, together with the Bāb al-Nūbī, one of the principal entrances to the caliphal city (*ḥarīm*) in East Baghdad. See LeStrange, *Baghdad During the Abbasid Caliphate*, 274. It appears that the person involved in the crime (the *ḥāmī*) sought immunity from the sulṭān's troops in the caliphal residence. This would explain why the *shihna* put pressure on some of the caliph's officials.

¹⁶⁹ Ibn al-Jawzī, *Muntazam*, XVII, 243. See *ibid.*, XVIII, 83: In 547/1152–3, the *faqīhs* of the Nizāmiyya *madrasa* revolted against one of the caliph's agents. The Chamberlain of the Gate arrested two of them and "punished them at the Bāb al-Nūbī, leading them there like thieves."

¹⁷⁰ Juwaynī, *ʿAtabat al-kataba*, 81. See *ibid.*, 61, 71.

¹⁷¹ Mīhanī, *Dastūr-i dabūrī*, 114: "bi-mujarrad-i tuḥmat u saʿāyat ruswāyi-yi ʿawrāt-i musulmānān na-kunad."

¹⁷² Sanāʿī, *Ḥadiqat al-ḥaqīqa*, 561–2.

a tyrannical *shihna*-policeman in Sarakhs (Qaṣaba) who stole money from an old woman, only to be punished by the same Maḥmūd in the most severe fashion.¹⁷³ Sanā'ī ironically recommends that one should become friends with the ruler, because this is the only way to protect oneself from the oppression wrought by *shihnas*.¹⁷⁴ According to the same author, *shihnas* ran around drunk in the villages, randomly shooting arrows at frightened villagers or destroying their property.¹⁷⁵

The official line, however, was that the ruler's *siyāsa* percolated down to the *shihna*-policemen. In a poem by Anvarī, the royal staff (*chūb-i āstān*) gives "fire" to the scourges of the *shihnas* (*shihna-yi chūbhā ādīsh shawad*).¹⁷⁶ Other poems of the period invoke the public safety offered by the "thief-catching *shihna*-policeman [*shihna-yi duzd-gīr*],"¹⁷⁷ or even compare the ruler himself to a *shihna*. Thus, Sirāj-i Balkhī, a Khwārazmian panegyrist, says about the ruler:

His command is, by discretion of fate, the judge of destiny,
his judgment, by complicity with destiny, is the *shihna* of fate.¹⁷⁸

Amr-ash bi-ikhtiyār-i qaḍā qāḍī-yi qadar
ḥukm-ash bi-ittifāq-i qadar shihna-yi qaḍā.

Such comparisons try to convey the following: just as fate appoints the ruler, the ruler appoints *shihnas*; both are, as it were, inevitable. The *shihna* thus partakes in, and supports, the awe inspired by the ruler's coercive power.

Punishment by the market-inspector (*muḥtasib*)

Market-inspectors were a typical feature of medieval Muslim urban life.¹⁷⁹ In the eyes of Muslim jurists, the *muḥtasib* was an agent of religion, and *ḥisba* a religious office (*wazīfa dīniyya*) based on the Qur'ānic injunction to "command right and forbid wrong [*al-amr bi-l-ma'rūf wa-l-nahy 'an al-munkar*; see 3:104]."¹⁸⁰ In the second half of the Saljūq period, there are in fact instances in which members of the religious class were appointed as

¹⁷³ Ibn Funduq, *Tārīkh-i Bayhaq*, 274.

¹⁷⁴ "Banda-yi khāṣṣ-i malik bāsh ki bā dāgh-i malik / rūzhā-yi aymanī az shihna ū shabhā-yi 'asas," quoted in *LN*, s.v. *dāgh*. Similar fears of the *shihna* are expressed by Nizāmī (*ibid.*, s.v. *shamshūr-bāzī*) and Awḥādī Marāgha'ī (d. 738/1337–8; see *ibid.*, s.v. *charik*).

¹⁷⁵ Sanā'ī, *Ḥadīqat al-ḥaqīqa*, 561–3. ¹⁷⁶ *LN*, s.v. *ādīsh*.

¹⁷⁷ See, for example, Nizāmī: "agar duzd-i burda bar ārad nafir / barad dast-i ū shihna-yi duzdgīr" (quoted in *LN*, s.v. *duzdgīr*); Khāqānī: "khirad-i shihna-rā hawā ma-kunīd / ruṭab-i pukhta-rā daqal ma-nahīd" (*ibid.*, s.v. *daqal*).

¹⁷⁸ *LN*, s.v. Sirāj-i Balkhī.

¹⁷⁹ Nizām al-Mulk stipulated that a market-inspector should be appointed by the sultān in every city. See his *Siyāsatnāma*, 52–3.

¹⁸⁰ Māwardī, *al-Aḥkām al-sultāniyya*, 240, 258; Waṭwāt, *Majmū'at al-rasā'il*, 80; Shihāb al-Dīn Abū l-'Abbās Aḥmad al-Qalqashandī, *Subḥ al-āshā fi sinā'at al-inshā'* (Cairo: Maṭba'at Dār al-Kutub al-Miṣriyya, 1918–22), XI, 211, XI, 212–13, XII, 63; Ḍiyā' al-Dīn Muḥammad b. Muḥammad Ibn al-Ukhuwwa, *Ma'ālim al-qurba fi aḥkām al-ḥisba* (Cambridge: Cambridge University Press, 1938), 13.

muḥtasibs,¹⁸¹ and a diploma of investiture in the ‘*Atabat al-kataba* concerning *ḥisba* in Māzandarān talks about the office in terms of a pious calling: the appointee, a man with the honorific Awḥad al-Dīn, earned the office because of his piety, his knowledge of the customs of *sharī‘a* cases (*rusūm-i shar‘iyyāt*), and his striving for the “revivification of the *sunna*.”¹⁸² However, such rhetoric is the stock-in-trade of any diploma of investiture; it may also reflect the central government’s attempt to coopt religious scholars into the civil administration. Whether there was an Islamization of the office under the Saljūqs is doubtful. Toward the end of the Būyid period, Māwardī had complained that *ḥisba* “declined in people’s estimation when rulers neglected it and conferred it on men of no repute, whose goal was to make profit and get bribes.”¹⁸³ Nizām al-Mulk stated that the office was traditionally given to one of the nobility, to a personal servant of the king (*khādīm*), or to an old Turk,¹⁸⁴ and there is little reason to think that things changed much under the subsequent Saljūq administrations.

The *muḥtasib* enjoyed, in addition to his duties as overseer of commercial transactions, punitive authority in a number of respects. The Saljūq chronicles make reference to him in various places. For over twenty years, Muḥammad b. al-Mubārak al-Khiraqī (d. 494/1101) was *muḥtasib* in Baghdad under the caliphs Muqtadī (r. 467/1075–487/1094) and Mustazhir (r. 487/1094–512/1118).¹⁸⁵ The vizier Rūdhrawārī, who was vizier to the caliph from 476/1083 to 484/1091, instructed him to discipline (*an yu‘addiba*) the cloth merchants (*bazzāzīn*) and others who opened their shops on Fridays and instead closed them on Saturdays, because, as the vizier reasoned, this would only “have helped the Jews to protect their Sabbath.”¹⁸⁶ A sixth-/twelfth-century investiture document also testifies to the *muḥtasib*’s power to punish merchants. If the *muḥtasib* found a merchant cheating his customers, he was instructed to discipline (*addaba*) him in public (‘*alā ru‘ūs al-ashhād*), so that tricksters and criminals (*ahl al-khiyāna wa-l-fasād*) were deterred from similar acts.¹⁸⁷ As for Khiraqī, he appears to have commanded the respect of the Baghdad population. “The foodsellers feared him,” relates Ibn al-Jawzī, “and he obliged the people running the bath-houses not to let anyone enter without a towel [*mī‘zar*], and he threatened to parade them publicly if they disobeyed.”¹⁸⁸

¹⁸¹ Juwaynī, ‘*Atabat al-kataba*, 52 (appointment diploma of *ḥisba* for a *qādī*); Lambton, “Contributions,” 289 (a *qādī*, quoting Ibn al-Athīr’s *Kāmil* for the year 501/1108).

¹⁸² Juwaynī, ‘*Atabat al-kataba*, 82–3.

¹⁸³ Māwardī, *al-Aḥkām al-sultāniyya*, 258. This has been translated by Henry F. Amedroz, in “The *Hisba* Jurisdiction in the *Aḥkām Sultāniyya* of Māwardī,” *JRAS* (1916), 101.

¹⁸⁴ Nizām al-Mulk, *Siyāsatnāma*, 56. For the Būyid period, See Willem Floor, “The Office of *Muhtasib* in Iran,” *Iranian Studies* 18, 1 (1985), 61–3.

¹⁸⁵ Ibn al-Jawzī, *Muntaẓam*, XVII, 73. ¹⁸⁶ *Ibid.*, XVII, 24.

¹⁸⁷ Waṭwāt, *Majmū‘at al-rasā‘il*, 81.

¹⁸⁸ Ibn al-Jawzī, *Muntaẓam*, XVII, 73. In 494/1100, Mustazhir ordered Khiraqī to prevent women from going out at night for amusement: *ibid.*, XVII, 66.

Ignominious parading appears to have been an important means of the *muḥtasib* to discipline criminals.¹⁸⁹ In 559/1163–4, a successor of Khiraqī in Baghdad ignominiously paraded a group of artisans who had shown their Shīʿite partisanship by weaving the names of the twelve imāms into the mats they were making.¹⁹⁰ The *muḥtasib* also administered public flogging. When the *faqīh* Abū l-Najīb, former director of the Nizāmiyya *madrasa*, was flogged at the Bāb al-Nūbī in 547/1152, an agent (*ghulām*) of the *muḥtasib* wielded the switch (*dirra*).¹⁹¹ In the ‘*Atabat al-kataba*, the *muḥtasib*’s jurisdiction over criminal affairs is defined rather broadly. He must

seek to hinder and detain the people of corruption [*ahl-i fasād*], and prevent them from public indiscretions [*mujaḥarāt*], spreading vice, and clandestinely selling wine [*taʿāfi-yi khamr*] near the mosque, tombs [*mashāhid*], or cemeteries.¹⁹²

Nizām al-Mulk stipulated that the *muḥtasib* should punish open manifestations of wine consumption. He relates, with approval, a story about one particularly energetic *muḥtasib* who did not hesitate to carry out the punishment, even against a member of the ruling class, a man called ‘Alī Nūshtigīn, commander-in-chief (*sipāh-salār*) of sultān Maḥmūd of Ghazna (r. 421/1030–432/1040). When ‘Alī Nūshtigīn returned from a night of debauchery at the sultān’s palace,

by coincidence, the market-inspector passed through the bazaar, together with a hundred men on horses and on foot. When he saw ‘Alī Nūshtigīn in such a drunken state, he ordered him pulled from his horse. Then he dismounted himself and had one [of his men] sit at his head and another at his feet. With his own hand he gave him forty strokes. He showed no mercy. ‘Alī Nūshtigīn sank his teeth into the ground as his troop and soldiers stood watching. Nobody dared to utter a word.¹⁹³

To what extent such stories reflect an ideal is hard to tell. At Ghazna under Masʿūd b. Maḥmūd, open alcohol consumption seems in fact to have been prosecuted by the *muḥtasib*.¹⁹⁴ The Shāfiʿite Māwardī held that open possession of wine should be punished by the *muḥtasib*.¹⁹⁵ The few cases of wine consumption recorded in the chronicles, however, refer to punishment with public parading, rather than with flogging.¹⁹⁶

¹⁸⁹ Cf. pp. 79–89.

¹⁹⁰ Ibn al-Jawzī, *Muntaẓam*, XVIII, 159. This was perhaps understood as a challenge to the authority of the caliph. Benjamin of Tudela, who visited Baghdad around 1170, relates that the caliph’s men sold mats with his insignia on them in the markets. See his *Massaʾot* (London: Henry Frowde, 1907), 55.

¹⁹¹ Ibn al-Jawzī, *Muntaẓam*, XVIII, 84. Abū l-Najīb ‘Abd al-Qāhir b. ‘Abd Allāh al-Suhrawardī was director of the Nizāmiyya from 545/1150 to 547/1152. See Halm, *Ausbreitung*, 166.

¹⁹² Juwaynī, ‘*Atabat al-kataba*, 82. ¹⁹³ Nizām al-Mulk, *Siyāsatanāma*, 53–4.

¹⁹⁴ Bayhaqī, *Tārīkh-i Bayhaqī*, 543, quoted in *LN*, s.v. *muḥtasib*.

¹⁹⁵ Amedroz, “The Hisba Jurisdiction,” 90. Open possession of forbidden toys and musical instruments was likewise punishable. See *ibid.*, 91. Other *ḥisba* manuals explain how the *muḥtasib* should punish wine drinking. See Shayzarī, *Nihāyat al-rutba*, 108; Ibn al-Ukhuwwa, *Maʿālim*, 49.

¹⁹⁶ Ibn al-Jawzī, *Muntaẓam*, XVII, 323, XVIII, 9.

The office of *muhtasib*, according to an appointment letter written by the Khwārazmian court secretary Rashīd al-Dīn Waṭwāṭ (d. 578/1182–3), serves to discipline those who devote themselves to a sinful life (*fīhi ta'dīb al-munhakimīna fī l-fisq*).¹⁹⁷ The *muhtasib* must “strengthen the upper arms [*a'dād*] of the masters of the divine law [*arbāb al-shar'*],” that is, the *qāḍīs*, *faqīhs*, and *mufīṣ*, and he must support its “lower arms [*sawā'idihā*],” presumably the policemen and coercive court personnel such as the court sheriffs (*jalāwiza*).¹⁹⁸ Elsewhere, Waṭwāṭ's diploma calls the *muhtasib* to “uphold the statutory punishments [*ḥudūd*] of the divine law.” Whether this means that the *muhtasib* was allowed to mete out such punishments at his own discretion is not clear. A *ḥisba* diploma from sixth-/twelfth-century Aleppo enjoins the *muhtasib* to curb the evil-doers by inflicting both *ta'zīr* and *ḥadd* punishments.¹⁹⁹ Waṭwāṭ's diploma expresses a measure of concern that the *muhtasib* and his agents might abuse their office to the detriment of the common people. Waṭwāṭ makes clear that the *muhtasib* must not “give low people [*awbāsh*] power over the houses of the Muslims and the harems of believers.”²⁰⁰

In addition to the chronicles and appointment diplomas, sources for *ḥisba* include administrative manuals written for (and sometimes by) *muhtasibs*. These manuals are fairly well known to Western historians, even though the question of the *muhtasib*'s power to punish has rarely been touched upon in the secondary literature.²⁰¹ From the Saljūq period, however, no *ḥisba* manual appears to have come down to us, and inferences from later manuals should be made with caution.²⁰² Shayzarī's (d. 589/1193) well-known manual

¹⁹⁷ Waṭwāṭ, *Majmū'at al-rasā'il*, 80. On Waṭwāṭ, see *EI2*, s.v. Rashīd al-Dīn Muḥammad b. Muḥammad, VIII, 444b (F. C. de Blois); and Arthur John Arberry, *Classical Persian Literature* (London: G. Allen & Unwin, 1958), 105–6. Cf. the epistle in Khūyī (Anatolian, fl. late seventh/thirteenth c.), *Rusūm al-rasā'il*, 43: “The *muhtasib* must protect the common people according to custom, by punishing the deviators [*dar . . . ta'dīb-i ahl-i fusūq marāsīm-i ḥimāyat bih ra'ayat rasānad*].”

¹⁹⁸ Waṭwāṭ, *Majmū'at al-rasā'il*, 80. See Shayzarī, *Nihāyat al-rutba*, 114, who states that “if the *muhtasib* sees a man acting insolently in a court session, contesting the judge's verdict or not complying with the judgment, he should chastise him for it.” For the term *jilwāz*, pl. *jalāwiza*, see Hallaq, *The Origins and Evolution of Islamic Law*, 60; Tyan, *Histoire*, 259. For a fuller discussion of the varying shades of meaning of the term, see p. 157 n. 130.

¹⁹⁹ Translated by Charles Pellat, “Un ‘traité’ de *ḥisba* signé: Saladin,” in R. Traini (ed.), *Studi in onore di Francesco Gabriellini suo ottantesimo compleanno* (Rome: Università di Roma “La Sapienza,” 1984), 597. The *muhtasib*, however, is not to exceed *ḥadd* measures when merely *ta'zīr* is called for. See Qalqashandī, *Ṣubḥ*, XII, 338:11, where *ḥisba* is characterized as “a support for the implementation of the *al-ḥudūd al-shar'iyya*.” Elsewhere in the *Ṣubḥ*, the *muhtasib* is enjoined to “protect the *ḥudūd* from falling into misuse.” See *ibid.*, XI, 211:12–13.

²⁰⁰ Waṭwāṭ, *Majmū'at al-rasā'il*, 81. The context of this statement suggests that what Waṭwāṭ means by “low people” are in fact the agents of the *muhtasib*, not random criminals, as Heribert Horst thinks. See *Die Staatsverwaltung*, 162.

²⁰¹ Major studies include Tyan, *Histoire*, 616–50, esp. 648–50; Pedro Chalmeta Gendrón, *El “señor del zoco” en España* (Madrid: Instituto Hispano-Arabe de Cultura, 1973); Ronald P. Buckley, “The Muhtasib,” *Arabica* 39 (1992), 59–117.

²⁰² Ghazālī's chapter on *ḥisba* in his *Iḥyā' 'ulūm al-dīn* (Beirut: Dār al-Ma'rifa, n.d.) focuses on the ethical duty of each individual to “command right and forbid wrong” and has less to say about the practicalities of the *muhtasib*'s work. This is also true of the references to *ḥisba* in the

comes closest to the Saljūq period in terms both of space and time.²⁰³ Shayzarī enjoins the *muhtasib* to be patient and not too eager to punish, and not to arrest (*yu'akkhidhu*) anybody if it is a person's first offense (*dhanb*), or to chastise (*yu'aqibu*) people for the first slip they make.²⁰⁴ From this, one infers that the *muhtasib* did in fact arrest and imprison people on mere suspicion, and was often too ready to inflict punishment.²⁰⁵ Shayzarī adds, following what Ghazālī and others recommended, that the *muhtasib* must first reprimand, then threaten to chastise, and finally punish the offender with *ta'zīr*.²⁰⁶ The latter, he adds, echoing a statement made by Waṭwāt, should never exceed the *ḥadd* punishment, but again this suggests that *ta'zīr* imposed by the *muhtasib* could in fact sometimes go beyond *ḥadd* measures.²⁰⁷

The manuals of *ḥisba* offer further interesting insights into the daily work of the *muhtasib*. For example, Shayzarī recommends that the whip (*sawṭ*), the switch (*dirra*), and the hat (*ṭarṭūr*) used in ignominious parades should be hung from the *muhtasib*'s booth (*dikka*) so that people can see them and be restrained from engaging in criminal activities.²⁰⁸ An eighth-/fourteenth-century *ḥisba* manual from India lists a plethora of punishments which the *muhtasib* could enact, including less violent methods such as rubbing the ear (*tafrīk al-udhn*), detention (*taqyīd*), or simple scolding.²⁰⁹ Some manuals even explain the appropriate procedure for stoning fornicators.²¹⁰ It remains

anonymous mirror for princes *Baḥr al-fawā'id* (tr. Meisami), 173–4. On the *muhtasib*'s liability for injuries inflicted during punishment, see *ibid.*, 132. For a translation of Ghazālī's chapter on *ḥisba* in the *Iḥyā'*, see Léon Bercher, "L'obligation d'ordonner le bien et d'interdire le mal selon Al-Ghazālī," *Revue de l'Institut des Belles Lettres Arabes* 18 (1955), 53–91; 20 (1957), 21–30; 21 (1958), 389–407; 23 (1960), 313–21. See Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2000), 427–68.

²⁰³ Shayzarī, *Nihāyat al-rutba*. This manual was written at Aleppo in the middle of the sixth/twelfth century and served as a prototype for subsequent manuals, such as Ibn al-Ukhuwwa's (d. 729/1329) famous treatise, the *Ma'ālim al-qurba*.

²⁰⁴ Shayzarī, *Nihāyat al-rutba*, 9.

²⁰⁵ In a *ḥisba* diploma issued at Aleppo around 579/1183 in the name of Ṣalāḥ al-Dīn al-Ayyūbī, the *muhtasib* is given the right to imprison and to release people at his discretion, while the governor and the agents of the *shihna* are called on not to contradict him. See Pellat, "Un traité de *ḥisba* signé: Saladin," 598.

²⁰⁶ Shayzarī, *Nihāyat al-rutba*, 9.

²⁰⁷ *Ibid.* See Tyan, *Histoire*, 649, who relates a number of examples from historical, albeit non-Saljūq, sources of *muhtasibs* flogging with more lashes than prescribed by *ḥadd*.

²⁰⁸ Shayzarī, *Nihāyat al-rutba*, 108; 'Umar b. Muḥammad b. 'Awad al-Sunāmī, *Niṣāb al-iḥtisāb* (Riyadh: Dār al-'Ulūm, 1982), 261. For the *dirra*, cf. pp. 78–9. For the *ṭarṭūr*, cf. p. 86.

²⁰⁹ Sunāmī, *Niṣāb al-iḥtisāb*, 27. Mū'il Izzi Dien, *The Theory and Practice of Market Law in Medieval Islam: A Study of Kitāb Niṣāb al-Iḥtisāb of 'Umar b. Muḥammad al-Sunāmī (fl. 7th–8th/13th–14th century)* (Cambridge: E. J. W. Gibb Memorial Trust, 1997), 50, translates, inadvertently, *al-kalām al-'anīf* as "severe scolding." According to Sunāmī, offences punishable by *ta'zīr* include compromising behavior between unmarried men and women, importing wine or pork into a Muslim city, forging documents and signatures, administering wine to small children, deflowering of a girl (by means other than copulation?), cutting a pack-horse's tail, shaving the hair of a slave-girl, keeping company with drunken men, walking with thieves, and making only an outward show of piety and asceticism. See Sunāmī, *Niṣāb al-iḥtisāb*, 29–33.

²¹⁰ Shayzarī, *Nihāyat al-rutba*, 108–9; Ibn al-Ukhuwwa, *Ma'ālim*, 228–34.

uncertain, however, whether the *muḥtasib* was only called to execute *ḥadd* punishments *post adjudicatio*, or whether he himself could, like the intrepid Turkish *muḥtasib* of Niẓām al-Mulk's story, pronounce the verdict and then carry it out.

Like the *shihna*, the *muḥtasib* was object of both the scorn and the praise of poets. Niẓāmī, in the late sixth/twelfth century, warned his readers not to get entangled with *muḥtasibs*, lest they feel the whip of a demon (*dirra-yi Iblīs-wār*).²¹¹ Sūzanī-yi Samarqandī (d. 569/1173) reveled in accusing *muḥtasibs* of sexual depravity.²¹² In later medieval times, Sa'dī castigated the bigotry of *muḥtasibs*, who drank wine but punished others for it, or walked around "bare-assed" (*kūn-birahna*) while telling prostitutes to veil their faces.²¹³ The Saljūq contemporary Sanā'ī, on the other hand, praised the *muḥtasib* for offering a degree of security in times when "the city is filled with thieves, and streets are filled with riffraff."²¹⁴ The *muḥtasib* also had his place in the royal ideology of *siyāsāt*. Niẓām al-Mulk stressed the close relationship between the king and *muḥtasib*, and he recommended that the king lend the *muḥtasib* full support (*dast-i ū qawī dārad*).²¹⁵ Anvarī and Khāqānī did not hesitate to call the ruler the "*muḥtasib* of the kingdom."²¹⁶ This portrays the *muḥtasib* as doing exactly what the ruler does: he instills fear in the hearts of evil-doers and he pacifies the realm by his use of punishment (*siyāsāt*).

However, fear of arbitrary punishment by the *muḥtasib* ran deep. Referring to the *muḥtasib*, it seems, Zamakhsharī exclaimed: "If you do not command right, can you not at least not destroy it [*lam yatanakkabūhu*]? And if you do not forbid wrong, can you not at least not commit it? They plunder this world with the greed of voracious beasts!"²¹⁷ Especially feared was the *muḥtasib*'s capacity to intrude into the privacy of people's homes. Much emphasis in Waṭwāt's sample diploma is put on the injunction to the *muḥtasib* to respect the inviolability (*ḥurma*) of private houses, such as not climbing on walls to spy through windows or look down onto rooftops;²¹⁸ as Waṭwāt states, it was within the *muḥtasib*'s power to "make public what ought to be veiled."²¹⁹ It could be argued that the office of *ḥisba* was in fact situated at the juncture between the private and the public.²²⁰ The *muḥtasib* had a critical responsibility to negotiate this fine line. He was allowed, within certain limits, eagerly

²¹¹ LN, s.v. *zīnhār*.

²¹² LN, s.v. *muḥtasib*: "dar-i dakhli har shihna ū muḥtasib-rā / gushāda-ast tā hast izārat-i gushāda."

²¹³ LN, s.v.v. *muḥtasib*, *birahna*. ²¹⁴ LN, s.v. *kūy*. ²¹⁵ Niẓām al-Mulk, *Siyāsāt-nāma*, 56.

²¹⁶ LN, s.v. *muḥtasib* (with reference to Khāqānī). See *ibid.*, s.v. *muḥtasib*: "inšāf-i tū miṣr-ist ki dar rasta-yi ū dīw / nazm az jihat-i muḥtasibī dāda dukān-rā" (Anvarī).

²¹⁷ Maḥmūd b. 'Umar al-Zamakhsharī, *Aṭwāq al-dhahab fī mawā'iz al-kuṭab* (Paris: Imprimerie Nationale, 1876), 180.

²¹⁸ As Horst, *Die Staatsverwaltung*, 162, thinks. ²¹⁹ Waṭwāt, *Majmū'at al-rasā'il*, 81.

²²⁰ The boundary separating these two was fluid and ever-shifting in relation to the individuals who were involved. See Roy Mottahedeh and Kristen Stilt, "Public and Private as Viewed Through the Work of the *Muhtasib*," *Social Research* 70, 3 (2003), 735–48.

defined by the religious scholars, to transgress into the privacy of private homes;²²¹ and he could, *qua* punishment, transport private sins into the public realm. It is perhaps no coincidence that ignominious parading, a practice called by the telling name of “making someone public [*tashhīr*],” is mentioned so often in the context of *ḥisba*. As I will have more occasion to show, it appears that *tashhīr* was in fact the *muḥtasib*’s prime punishment.²²²

²²¹ *Ibid.*, 738.

²²² Cf. pp. 79–89, 222–3. Hoexter, “La shurṭa à Alger à l’époque turque,” 132, mentions that “it appears that the punishment of *tashhīr* was inflicted in Algiers only in retribution for certain offenses related to *ḥisba*.”

Types of punishment

Execution by the sword

This chapter introduces a third taxonomy, in addition to the spheres and institutions of punishment: that of types of punishment. Punishments under the Saljūqs fall into the following four categories: executions, corporal punishments, imprisonment and banishment, and shaming, that is, ignominious parading.¹ These types of punishment are of interest here especially in as much as they are public. Private forms of punishment will be treated in a somewhat less detailed manner.

Public executions by the sword are mentioned infrequently in the historiography of the Saljūq period. There can be little doubt, however, that the practice existed and was rather widespread, as it had been prior to the rise of the Saljūqs.² In 493/1100, sulṭān Barkyārūq had a chief of a non-military looting band in Wāsiṭ arrested, beaten, and then split in two.³ A Bāṭinī assassin was beheaded at Damascus in 507/1113–14.⁴ Some cases of decapitation in retaliation (*qiṣās*) for homicide are recorded for Saljūq Baghdad. In the year 549/1155, a servant who had confessed to the murder of his patron's wife was beheaded by his patron in the courtyard of the Congregational Mosque (*raḥbat al-jāmi'*).⁵ In the same year, a slave-girl (*jāriya*) who had killed the wife of her master was beheaded in the same place "in the presence of the

¹ This typology of punishment is arguably not complete. For example, jurists discussed the allowability of fines (*al-ʿuqūbāt al-māliyya, al-taʿzīr bi l-māl*). See Peters, *Crime and Punishment*, 33, passim. For a discussion of the licitness of fining, see Muḥammad b. Abī Bakr Ibn Qayyim al-Jawziyya, *al-Firāsa* (Baghdad: [n.p.], 1986), 246–50.

² The *Tārīkh-i Bayhaq*, written in 563/1167–8, relates a story about the Ghaznavid king Masʿūd b. Maḥmūd (r. 421/1030–432/1040) in which Masʿūd had a tyrannical police inspector of Sabzavār cut into three pieces and then publicly displayed. See Ibn Funduq, *Tārīkh-i Bayhaq*, 274. This story is repeated, with slight variations, in Sanāʿī's *Ḥadīqat al-ḥaqīqa*, 557–61, and in Ibn Bibī's *Saljūqnāma* (tr. Duda), 32–3 (here the hero of the story is the Rūm Saljūq Rukn al-Dīn). The governor of Sīstān ʿAzīz Fushanjī (r.c.423/1032) dealt severely with the local ʿayyārān, flogging their chiefs, decapitating them, and cutting them in half. See anon., *Tārīkh-i Sīstān*, 202.

³ Ibn al-Jawzī, *Muntaẓam*, XVII, 52. ⁴ Ibn al-Athīr, *Kāmil*, VIII, 597.

⁵ Ibn al-Jawzī, *Muntaẓam*, XVII, 76.

people, in the same way in which men are killed.”⁶ By analogy it can be inferred that the courtyard of the mosque was also the place of execution when, in 559/1163–4, a little boy was killed by the sword in retribution for slaying another boy with an axe (*minjal*).⁷

Perhaps decapitation with the sword was indeed the most common type of public execution, as Spuler claimed,⁸ and the reason why such public executions are not more often recorded by the chroniclers is simply because they were not “spectacular” enough.⁹ No doubt decapitation, one of the punishments proscribed by *sharʿa*, was a more honorable form of death than being cut through the waist or into several pieces, a fate reserved for criminals from the lower classes. However, decapitation in public was not a punishment meted out to members of the ruling classes, such as *amīrs* or high government officials. This would have aroused the interest of the chroniclers, but in fact not a single case is recorded.

Gibbeting (*ṣalb*/*bar dār kardan*)

Saljūq chronicles mention gibbeting and related practices more frequently than executions by the sword. The Arabic *ṣalb* is commonly translated as “crucifixion.” However, the term *tasmīr* (“nailing”) is not used in the Saljūq chronicles and appears to belong to the vocabulary of historians of a later generation.¹⁰ *Ṣalb* could consist simply in exposing someone on a wooden trunk or pole, after which the offender was taken down again.¹¹ It could also

⁶ *Ibid.*, XVIII, 98. ⁷ *Ibid.*, XVIII, 159. ⁸ Spuler, *Iran in frühislamischer Zeit*, 373.

⁹ A plethora of reports seems to refer to decapitation, but give little contextual information. (1) In the year 526/1132, the Baghdādī scholar Muḥammad b. Abī Yaʿlā was murdered while asleep in his house in the Bāb al-Marātib quarter. Criminal investigation brought to light that he had been killed by his own servants because he kept a large sum of money in his house. Ibn al-Jawzī remarks that “God willed that they were all arrested and executed,” but no further information (other than the place of execution, the Bāb al-Nūbī) is given. See Ibn al-Jawzī, *Muntaẓam*, XVII, 274. See also *ibid.*, XVII, 49. (2) The Transoxanian scholar Imām Ismāʿīl b. Abī Naṣr al-Ṣaffār was publicly executed (by the sword?) in 461/1068–9. He was a Ḥanafī scholar who was killed in Bukhārā by the Qarakhānid ruler Shams al-Mulk Naṣr (r. 460/1068–472/1080) because of his excessiveness in “commanding right and forbidding wrong” (*al-amr bi-l-maʿrūf wa-l-nahy ʿan al-munkar*). See ‘Abd al-Karīm b. Muḥammad al-Samʿānī, *K. al-Anṣab* (Hyderabad: Matbaʿat Majlis Dāʿirat al-Maʿārif al-Uthmāniyya, 1962–82), VIII, 318.13, quoted in Michael Cook, *Commanding Right and Forbidding Wrong*, 316. (3) See also Ibn Funduq, *Tārīkh-i Bayhaq*, 273, for the (public?) execution of a *faqīh* by the governor (*ʿāmil*) of Bayhaq in 450/1058. (4) Ibn Funduq, *Tārīkh-i Bayhaq*, 108, also reports a case of talionic punishment in which seventy-five men were executed in retribution for the killing of a notable in Bayhaq, Khāja Abū l-Qāsim al-Ḥusayn al-Bayhaqī, the great-grandfather of the author of the *Tārīkh*, Abū l-Ḥasan ʿAlī b. Zayd al-Bayhaqī. The Ḥanafīs argued that only one person could be killed in retribution. See Johansen, “Eigentum, Familie und Obrigkeit,” 30. The Shāfiʿīs, however, argued that all participants in the killing were to be subjected to *qiṣās*. See Ghazālī, *al-Mustasfa fī ʿilm al-uṣūl* (edited by Muḥammad al-Shāfiʿ; Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), 330.

¹⁰ Reinhart Dozy, *Dictionnaire détaillé des noms des vêtements chez les Arabes* (1845, Beirut: Librairie du Liban, [1969]), 260–1 n. 7, gives examples from Mamlūk chronicles.

¹¹ See the examples in Manfred Ullmann, *Das Motiv der Kreuzigung in der arabischen Poesie des Mittelalters* (Wiesbaden: Harassowitz, 1995).

be a form of exposing a corpse *after* the actual execution.¹² In 500/1107, sultān Muḥammad ordered the vizier Sa'd al-Mulk Abū l-Maḥāsin executed and then gibbeted (*ṣaliba*) on the charge of Bāṭinism, together with a number of other suspects, on the banks of the Zarrīna river at Iṣfahān.¹³ An anonymous Persian chronicler states that the sultān ordered Sa'd al-Mulk to be executed (*siyāsāt farmūd*) and then hung up (*biyāwēkht*) at the city gate.¹⁴ From this, one might in fact conclude that chroniclers sometimes confused two different practices, that is, *ṣalb* and *āwēkhtan*.¹⁵ However, it is equally possible that the two are in fact synonymous.¹⁶ Some reports mention that people suffered *ṣalb* with a rope around their necks.¹⁷ In general, then, *ṣalb* is to tie or to hang someone on a post (*khashaba*) or a simple contraption made of wood.¹⁸ At any rate, *ṣalb* was not identical with crucifixion according to the Western or Roman model, that is, the killing of the condemned on a cross by nailing the body to the wood.¹⁹ Therefore, it is perhaps best to speak simply of gibbeting or hanging.

No description of the wooden contraption used for gibbeting appears to have come down to us.²⁰ The Persian sources often use the synonymous expression *bar dār kardan*, “to put on the *dār*.”²¹ A nineteenth-century Persian source describes the *dār* as a wooden arch (*chūbī-yi kham*) from which people are hanged with a rope – that is, as a gallows – but in earlier times a *dār* appears to have been any kind of wooden stand.²² One Saljūq vizier is described as having gibbeted thieves and highway-robbers “as if on cords fixed to the saddle for

¹² Ḥusaynī, *Zubdat al-tawārīkh* (ed. Iqbal), 83. For another example, see Ibn Bībī, *Saljūqnāma* (tr. Duda), 206–7.

¹³ Ibn al-Kathīr, *Kāmil*, IX, 546; Ibn al-Jawzī, *Muntaẓam*, XVII, 100. Ḥusaynī, *Zubdat al-tawārīkh* (ed. Iqbal), 83, specifies that the vizier was first killed and *then* gibbeted (*qatalahu fa-ṣalabahū*). According to Bundārī, *Tārīkh dawlat āl Saljūq*, 91, the charge of Bāṭinism was unjustified. See also Hodgson, *Order of the Assassins*, 96; Turan, *Selçuklar tarihi*, 228.

¹⁴ Anon., *Mujmal al-tawārīkh*, 411.

¹⁵ Thus, Spuler, *Iran in frühislamischer Zeit*, 374 n. 4.

¹⁶ *MA*, VI, 53, comments that in the Baghdādī dialect hanging (*shanaq*) is the same as *ṣalb*.

¹⁷ Bundārī, *Tārīkh dawlat āl Saljūq*, 157 (execution of Darguzīnī).

¹⁸ Ibn al-Jawzī, *Muntaẓam*, XVII, 310: “nuṣibat lahu khashaba.”

¹⁹ Abou El Fadl, *Rebellion and Violence in Islamic Law*, 47 n. 67.

²⁰ Spies, “Über die Kreuzigung im Islam,” 155.

²¹ Bayhaqī, *Tārīkh-i Bayhaqī*, 166 (execution of the *amīr* Ḥasanak); anon., *Tārīkh-i Sīstān*, 205; Niẓām al-Mulk, *Siyāsatnāma*, 150, 240 (execution of Bāṭinīs), 241 (the Bāṭinī ‘Alī b. Muḥammad Barqaī). Consider also the terms *bar kashidan* (“to pull up”), anon., *Tārīkh-i Sīstān*, 204, *bar awīkhtan* (“to hang someone”), and *maṣlūb kardan*, which Dihkhudā says is a synonym of *bar dār kardan*. See *LN*, s.v.v. *bar awīkhtan*, *awīkhtan*. Under the Ghaznavid sultān Mas'ūd b. Maḥmūd, mass executions on the *dār* are reported. Bayhaqī relates that, on one occasion, the sultān had 120 criminals (*muḥsidān*) hanged, or even 180, in a long corridor of gibbets facing each other (*dārḥā-yi dūrūya*): *Tārīkh-i Bayhaqī*, quoted in *LN*, s.v.v. *ḥishmat*, *dūrūya*.

²² *LN*, s.v. *dār*. Anvarī, *Iṣṭilāḥāt-i dīwānī*, 223, says the *dār* was a piece of wood which criminals were made to carry around their neck, and he calls this a “very ancient practice,” but I believe he mistakes the *dār* for instruments such as *falaq* and *pālhang*, for which see below.

hanging game [*chūn fitrāk dar āwēkht*].²³ Varieties of gibbeting included tying the condemned to the *dār* head down,²⁴ or putting only the head on the *dār*.²⁵

Gibbeting was a punishment suffered by all social classes. Most often, however, it was the punishment reserved for two groups: criminals and people suspected of Bāṭinism.²⁶ According to Islamic law, highway robbery (*qaṭ' al-tariq*) in conjunction with homicide is punishable by *ṣalb*.²⁷ References to gibbeting of highway-robbers, however, are relatively rare in the sources.²⁸ Gibbeting seems to have been applied to common criminals and thieves as well. For the period from 530/1135 to 532/1138, the chronicler Ibn al-Jawzī reports more than a dozen cases of gibbeting in Baghdad. This was a time in which urban security in Baghdad was severely compromised by the murder of two caliphs (Mustarshid and Rāshid) and the ensuing public disorder caused, in large measure, by the *'ayyārūn*, who competed for rule in their quarters. In Shawwāl 530/July 1135, two *'ayyārūn* were put on the gibbet in the Dawwāb quarter “because they had made themselves tax-collectors [*jabiya*] over the quarter.”²⁹ The following year, the *shihna* put a group of burglars on trunks of wood (*ṣalabahum 'alā juzū'*),³⁰ as in general the agents of *shihna* seem to have been entrusted with the task of putting people on the *dār*.³¹ Eleven *'ayyārūn* were gibbeted in the markets in 532/1137.³² Ibn al-Bazzāz, one of the leaders of the *'ayyārūn* who had his hideout in the Sawād, was gibbeted shortly thereafter.³³ However, the *'ayyārūn* continued to plague the city, so that the caliph complained to the deputy *shihna* that “there is not enough punishment, and people perish [*al-siyāsa qāṣira wa-l-nās qad halakū!*]”³⁴ Eventually, sultān Mas'ūd ordered the chief of the *'ayyārūn* to be put on the

²³ Anon. (Pseudo-Tha'ālibī), *Tuhfat al-wuzarā'*, 96 (referring to Kamāl al-Dīn Khāzin, vizier of Muḥammad).

²⁴ *LN*, s.v. *sarnagūn*, quoting Firdawsī: “Put the tyrant on the gibbet alive, / his two legs up and head down [*sarnagūn-sar kun*].”

²⁵ Rāwandī, *Rāhat al-sudūr*: “Ibrāhīm ordered that his head be put on the *dār*,” quoted in *LN*, s.v. *shurīdan*. See *ibid.*, s.v.v. *āshūfta*, *bar giriftan*, for other examples taken from Firdawsī and the anonymous *Tārikh-i Sistān*.

²⁶ Other reasons include espionage: Ibn al-Athīr, *Kāmil*, VIII, 615 (Kirmān, 510/1116–17); embezzlement: Ibn al-Jawzī, *Muntaẓam*, XVII, 307 (Baghdad, 530/1135); high treason: Ibn Bibī, *Saljūqnāma* (tr. Duda), 175. See also the rather curious episode *ibid.*, 206–7, where Sa'd al-Dīn Kōpek, vizier of the Rum Saljūq sultān Ghiyāth al-Dīn (r. 634/1236–644/1246), gibbets a camel that transgressed into a peasant's sowing field and destroyed the crop.

²⁷ *EI2*, s.v. Ḥadd, III, 20a (J. Schacht, B. Carra de Vaux, and A. M. Goichon).

²⁸ The only explicit case appears to be mentioned in Ibn Bibī, *Saljūqnāma* (tr. Duda), 22–3 (under Rukn al-Dīn, r. 592/1196–600/1203). See also anon. (Pseudo-Tha'ālibī), *Tuhfat al-wuzarā'*, 96, for the Saljūq vizier Kamāl al-Dīn Khāzin (served under Muḥammad b. Malikshāh), famous for hanging thieves and highway-robbers.

²⁹ Ibn al-Jawzī, *Muntaẓam*, XVII, 310. ³⁰ *Ibid.*, XVII, 324.

³¹ Cf. the line by Khaqānī: “gar kār-i man az ishq-ash bā shihna ū dār uftad / az shihna natarsam man w-az dār nayandisham” (“Should I get entangled with the *shihna* and the gibbet because of my love for him / I would not fear the *shihna*, and would not think of the gibbet”; quoted in *LN*, s.v. *dār*).

³² Ibn al-Jawzī, *Muntaẓam*, XVII, 327. ³³ Ibn al-Athīr, *Kāmil*, IX, 96. ³⁴ *Ibid.*, IX, 128.

gibbet, together with three of his helpers, at one of the city gates. As a result, “people became quiet.”³⁵ Gibbeting of thieves and other criminals was by no means restricted to Baghdad. Khurāsānian poets of the fifth/tenth and sixth/twelfth centuries refer to the punishment repeatedly. Firdawsī and Nizāmī mention thieves on the gibbet; ‘Aṭṭār speaks of murderers.³⁶ After Sanjar’s conquest of Ghazna in 510/1116, looters plagued the already pillaged city to such an extent that the sultān had to put some of them on the gibbet, “until the people desisted [*ḥattā kaffa l-nās*].”³⁷

Bāṭinīs were gibbeted frequently. Mere suspicion, as in the aforementioned case of the vizier Sa’d al-Mulk, was often enough reason for this. In 518/1124, members of a caravan coming from Damascus were suspected of plotting to assassinate Baghdad’s noblemen (*a’yān*), including the vizier. The vizier ordered them gibbeted on three different public spots all over the city.³⁸ The *ṣūfi* and jurist ‘Ayn al-Quḍāt al-Hamadhānī was gibbeted under the charge of Bāṭinism in 525/1131,³⁹ as was the man responsible for ‘Ayn al-Quḍāt’s execution, the vizier Darguzīnī.⁴⁰ Darguzīnī was executed on the order of the Saljūq ruler Tughril of Āzarbayjān in 527/1133. Tughril, after losing a battle against his brother Mas‘ūd near Hamadhān, fled toward Iṣfahān, and on the way vented his rage on the vizier, accusing him of Bāṭinī connections. As the chronicler Bundārī relates,

he [Tughril] ordered him to be denuded, and a piece of redhot iron was put to his jugular vein [*fa-amara bi-ish‘āl nār al-ḥadīd fī mā‘i warīdihī*]⁴¹ ... He ordered him hanged [*amara bi-ṣalbihi*], and so he was. His body was so heavy that the rope around his neck snapped, and so, as he died, he fell to the ground. Among the bystanders was

³⁵ Ibn al-Jawzī, *Muntaẓam*, XVIII, 31.

³⁶ Quoted in *LN*, s.v.v. *āshūfta* (Firdawsī), *sharmsarī* (Nizāmī), *khūnī* (‘Aṭṭār, from the *Tadhkirat al-awliyā*). See also Ibn al-Jawzī, *Muntaẓam*, XVII, 327, for the gibbeting of a *ṣūfi* charged with murdering a young boy.

³⁷ Ibn al-Athīr, *Kāmil*, IX, 605 (year 508/1114–15). Cf. Clifford E. Bosworth, *The Later Ghaznavids: Splendour and Decay* (New York: Columbia University Press, 1977), 96–7. During his raids into the Jazīra and Syria in 502/1108–9, the *amīr* Jāwulī occupied Bālis after some resistance from the local population. He proceeded to gibbet a number of local notables (*a’yān*) at the city wall, near the place where the wall had been breached for the first time. See Ibn al-Athīr, *Kāmil*, VIII, 568.

³⁸ Ibn al-Jawzī, *Muntaẓam*, XVII, 225.

³⁹ Hagiographical distortion of his execution, however, makes it difficult to decide what the nature of his punishment really was. See Dabashi, *Truth and Narrative*, 500; Safī, *The Politics of Knowledge*, 165.

⁴⁰ Husaynī, *Zubdat al-tawārikh*, 203; Ibn al-Athīr, *Kāmil*, IX, 44; Bundārī, *Tārīkh dawlat āl Saljūq*, 157; Najm al-Dīn Abū l-Rajā’ al-Qummī, *Tārīkh al-wuzarā’* (Tehran: Mu’assasat-yi Muṭāla‘āt ū Taḥqīqāt-i Farhangī, 1363/[1985]), 25; Khwāndamīr, *Dastūr al-wuzarā’*, 204–5. For a fuller discussion of the background to this execution, see below. Here I am concerned more with what Darguzīnī’s death can tell us about the practice of execution in general, and of gibbeting in particular.

⁴¹ Perhaps this passage ought to be taken metaphorically, in the sense of: “He ordered that a redhot iron (of destruction) be put on the water of his jugular vein (his life force).” In Bundārī’s *Tārīkh dawlat āl Saljūq*, this passage comes after the description of Darguzīnī’s death; I have reversed the order for chronological reasons.

a slave of [the *amīr*] Shīrkīr, who was well aware of what had happened to his master because of him.⁴² He cut the throat of the shackled vizier with his sword and then beheaded him. Then he was cut to pieces on the spot, and his brains spilled out, and he was carried to the son of Shīrkīr. Then the dogs ate him.⁴³

The sheer brutality of the incident is staggering, but gibbeting of individuals who were, like Darguzīnī, particularly despised by the populace often ended in mob lynchings. Ibn al-Jawzī relates that a number of government officials (tax-collectors and *shihnas*) were put on the gibbet in Baghdad, one of them in the courtyard of the Friday mosque, followed by mutilation (*tamthīl*) of the displayed bodies by an enraged mob.⁴⁴

In sum, gibbeting was an eminently public act, for it was carried out at the city gates, at intersections of important streets, in the markets,⁴⁵ on open squares (including the courtyard of the Friday mosque), and on the banks of rivers.⁴⁶ The condemned, like the vizier Darguzīnī, could be stripped of their clothes before they were hanged.⁴⁷ One important function of gibbeting, then, was the ignominious display of the condemned. Punishment consisted not only in executing; an equally important aim was to shame the victim. As Niẓāmī put it, “he put him on the *dār* alive and did not mind / that he would die in shame, like thieves [*zinda bar dār kard u bāk naburd / tā chū duzdān bi-sharmsārī murd*].”⁴⁸ In consequence, gibbeting went a long way toward intimidating and terrorizing the populace. As the chroniclers record, whenever criminals or political enemies were hanged, “great horror was the result [*hishmatī sakht-i buzurg biyuftād*].”⁴⁹

Other forms of capital punishment

The sources mention a couple of public executions with more unconventional methods, such as stoning, drowning, burning, throwing down from heights, suffocating, and trampling by elephants. *Hisba* manuals from the sixth/twelfth and seventh/thirteenth centuries enjoin the market-inspector (*muhtasib*) to gather people outside the city for public stonings, in which the condemned

⁴² Apparently, the *amīr* Shīrkīr had been executed on the order of Darguzīnī.

⁴³ Bundārī, *Tārīkh dawlat āl Saljūq*, 157. According to Ḥusaynī, *Zubdat al-tawārīkh*, 203, Darguzīnī “was cut to small pieces [*quṭṭī’a irban irban*],” and “his head and limbs were paraded around [*īfa bi-ra’sihi wa-bi-a’dā’ihī*], one part of his body in each town.”

⁴⁴ Ibn al-Jawzī, *Muntaẓam*, XVII, 307 (the tax-collector Ibn al-Harūnī in 530/1135); Ibn al-Jawzī, *Muntaẓam*, XVII, 328 (the *shihna* of Baghdad, for killing a young boy).

⁴⁵ In 448/1056, the vizier Ibn al-Muslima had the head of the cloth-merchants (*shaykh al-bazzāzīm*) gibbeted on the door of his shop (*dukkān*) on charges of Shī‘ī extremism. See *MA*, III, 244.

⁴⁶ Spies, “Über die Kreuzigung im Islam,” 151, 153, mentions cases of *ṣalb* on the banks of the Guadalquivir and Tigris.

⁴⁷ Cf. the execution of the vizier Ḥasanak in Bayhaqī, *Tārīkh-i Bayhaqī*, 174.

⁴⁸ *LN*, s.v. *sharmsārī*.

⁴⁹ Bayhaqī, *Tārīkh-i Bayhaqī*, quoted in *LN*, s.v. *hishmat*. Cf. Narshakhī, *Tārīkh-i Bukhārā*, 76: “He ordered the two to be put on the gibbet and the people of the city became afraid again.”

was to be immersed into the ground up to his navel.⁵⁰ Stoning, according to Islamic law, is reserved for married (or previously married) fornicators.⁵¹ In Saljuq historiography, few, if any, reports about stoning on charges of fornication can be found.⁵² The sources suggest that the practice was also directed against apostates (*murtaddūn*). The poets Ḥasan-i Ghaznavī (d. 555/1160) and Khāqānī (d. 595/1199) both speak of stoning (*sang-rēz*) as the punishment for idol-worship (*but-parastī*).⁵³ In 420/1029, under Maḥmūd of Ghazna, dozens of Bāṭinīs were reportedly stoned in Rayy.⁵⁴ Under the Saljuqs, a shoemaker suspected of Bāṭinism, after gruesome maiming (amputation of hands, feet, and genitals), was stoned to death in 520/1127 at Mosul.⁵⁵ A fragmentary chronicle written under sulṭān Malikshāh mentions that around 475/1082 at Marv, a man by the name of Maḥmūd al-ʿAlawī al-Īlāqī was stoned. This Īlāqī was known for his closeness to the Khurramiyya, a sect considered heretical and often, if undeservedly, imputed with sexual libertarianism.⁵⁶ According to the chronicler, Īlāqī had been selling places in paradise to the people.⁵⁷ He was gibbeted and stoned to death.⁵⁸ Stoning, which some jurists claimed was also the punishment for sodomy,⁵⁹ was a practice reminiscent of God's punishment of the inhabitants of Sodom and Gomorrah (the *qawm Lūt*; cf. Qurʾān 11:81–2), and as such perhaps could be thought to be applicable to all sorts of godless and sexually deviant people.

Bāṭinīs were drowned in the Tigris in the years 516/1122–3 and 518/1124–5.⁶⁰ In 530/1135–6, the *shihna* of Baghdad, who had plotted with sulṭān Masʿūd against his own superior, the *atabeg* Zankī, was drowned in the Tigris on Zankī's orders.⁶¹ Around 540/1144, the poet Adīb Ṣābir al-Tirmidhī, an envoy of Sanjar to the ruler of Khwārazm Atsiz, was put in chains and thrown

⁵⁰ Shayzarī, *Nihāyat al-rutba*, 108; Ibn al-Ukhuwwa, *Maʿālim*, 231.

⁵¹ Ibn al-Ukhuwwa, *Maʿālim*, 231. Cf. Peters, *Crime and Punishment*, 59–62.

⁵² But see Ibn Bībī, *Saljuqnāma* (tr. Duda), 204–5, where an *amīr* and ex-minister of fiefs (*parwāna*) is stoned around 637/1240 at Ankara, on a charge of fornication (*zinā*), with the written consent of the sulṭān and after consultation with “leading jurists.”

⁵³ *LN*, s.v. *sang-rēz*.

⁵⁴ ʿAbd al-Hayy Gardīzī, *Tārīkh-i Gardīzī* (Berlin: Irānschāhr, 1928), 91.

⁵⁵ Ibn al-Athīr, *Kāmil*, VIII, 705.

⁵⁶ See *EI2*, s.v. *Khurramiyya*, V, 63b–65b (W. Madelung).

⁵⁷ To sell places in paradise is one of the Banū Sāsān's tricks to defraud people of their money. See the *Qaṣīda sāsanīyya* by Abū Dulaf (Būyid period), translated by Clifford E. Bosworth in *The Medieval Islamic Underworld: The Banū Sāsān in Arabic Society and Literature* (Leiden: Brill, 1976), II, 202, verse 81.

⁵⁸ Iskandar, “A Doctor's Book on Zoology,” 279–80.

⁵⁹ For a discussion of stoning as the punishment for sodomy, see pp. 199–212. For a survey, see also Arno Schmitt, “*Liwaʿt* im *Fiqh*: männliche Homosexualität?,” *Journal of Arabic and Islamic Studies* 4 (2001–2), 49–110.

⁶⁰ Ibn al-Jawzī, *Muntaẓam*, XVII, 213, 225.

⁶¹ *Ibid.*, XVII, 308. Another *shihna* of Baghdad and one of Zankī's fellow conspirers, the *amīr* Albaqush, was captured by Masʿūd and imprisoned in the Tikrīt fortress. At the approach of his executioners to his prison cell, rather than incurring their punishment, the *amīr* preferred to jump out of the window and drown himself in the Tigris. This, however, can hardly count as an execution by drowning. See Ibn al-Athīr, *Kāmil*, IX, 98; Ibn al-Jawzī, *Muntaẓam*, XVII, 330.

into the Oxus (*gharq sākht*) on the order of Atsiz. He had informed Sanjar's court in Marv that Atsiz was sending two Bāṭinī assassins against the sultān.⁶² Adīb Ṣābir had a famous predecessor who suffered the same treatment: the Baṣrian poet Bashshār b. Burd (d. 168/784), who, because of a venomous verse, was beaten to death by order of the caliph Maḥdī, and his body thrown into the Tigris.⁶³

According to a well-known Prophetic saying, fire was a punishment reserved uniquely for the hereafter.⁶⁴ However, burning at the stake was a mode of execution that was not unknown in Saljūq times.⁶⁵ Ibn al-Jawzī relates that in the year 530/1135–6, in the courtyard of the Friday mosque in Baghdad, a Muslim woman was made to stand in a reed basket (*ḥalla min al-qaṣab*); a naphtha-thrower (*naffāt*) put fire to the basket, which went up in flames.⁶⁶ The passage indicates that there was a certain protocol to execution by fire, including a person called *naffāt*, especially designated to carry out the punishment. Judging from the religious setting of this incident, the woman was perhaps on trial for apostasy.⁶⁷ Most cases of burnings in fact involve Bāṭinīs, as during the pogrom in Iṣfahān in 494/1101, where people were burned in dozens, immersed in trenches filled with naphtha (that is, liquid petroleum).⁶⁸

⁶² 'Alā' al-Dīn 'Aṭā Malik Juwaynī, *Tārīkh-i Jahāngushā* (Leiden: Brill, 1912–37), II, 8; Dawlatshāh b. 'Alā' al-Dawla Bakhtīshāh Samarqandī, *Tadhkirat al-shu'arā'* (London: Luzac, 1901), 94. Cf. Agadshānow, *Der Staat der Seldschukiden*, 259 n. 71; *EI2*, s.v. Ṣābir b. Ismā'īl al-Tirmidhī, VIII, 683a (F. C. de Blois). For more cases of drowning as punishment in the Saljūq period, see *MA*, VI, 102 (the Jewish *dāmin* of Baṣra in 472/1079–80 on the orders of Malikshāh), 103 (the *amūr* Salārḳurd in 547/1152–3).

⁶³ Mez, *Renaissance*, 255.

⁶⁴ Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ* (Beirut: Dār Ibn Kathīr, 1407/1987), III, 1079, 1098; Aḥmad b. Shu'ayb al-Nasā'ī, *al-Sunan al-kubrā* (Beirut: Dār al-Kutub al-'Ilmiyya, 1411/1991), V, 183; Aḥmad b. al-Ḥusayn al-Bayhaqī, *al-Sunan al-kubrā* (Mecca: Maktabat Dār al-Bāz, 1414/1994), IX, 71; Muḥammad b. 'Isā al-Tirmidhī, *Sunan* (Beirut: Dār al-Gharb al-Islāmī, [1996]), 137; Aḥmad b. Muḥammad Ibn Ḥanbal, *Musnad* (Cairo: Mu'assasat Qurṭuba, n.d.), II, 307, 338, 453. Cf. Josef van Ess, *Das K. al-Nakṭ al-Nazzām und seine Rezeption im Kitāb al-Futūā des Ḡāḥiz* (Göttingen: Vandenhoeck & Ruprecht, 1972), 50; *EII*, s.v. Murtadd, VI, 736b–738a ([W.] Heffening); Joel Kraemer, "Apostates, Rebels and Brigands," *IOS* 10 (1980), 40.

⁶⁵ For cases of burning from the beginnings of Islam to modern times, see further *MA*, VI, 187–204. In the early nineteenth century in Ottoman Tunis, a Jew was burned for housing a Muslim–Christian couple. See Brunschvig, "Justice religieuse et justice laïque," 52. Public burnings of Jews were discontinued in Tunis after 1818, when the inhabitants of the city attributed an epidemic to an execution of this order (*ibid.*, 64). For cases of the burning of Jews under Ottoman rule in Algiers, see Hoexter, "La shurṭa à Alger à l'époque turque," 134.

⁶⁶ Ibn al-Jawzī, *Muntaẓam*, XVII, 310.

⁶⁷ However, according to the Ḥanafīs, alone among the schools of *fiqh*, apostasy was punishable only on the grounds of the military and political danger resulting from it. On such terms, women were *per definitionem* excluded from the punishment. See Baber Johansen, "Apostasy as Objective and Depersonalized Fact: Two Recent Egyptian Court Judgments," *Social Research* 70, 2 (2003), 694, 705, who gives a succinct summary of the debate among the classical Ḥanafī jurists.

⁶⁸ Ibn al-Athīr, *Kāmil*, VIII, 450. Bāṭinīs, in turn, also practiced burning of their enemies. See Rashīd al-Dīn, *Jāmi' al-tawārīkh*, 141 (burning of a Twelver Shī'ite in Daylam). Burning of apostates was already practiced before the rise of Bāṭinism. Abū Ma'far Muḥammad b. Jarīr al-Ṭabarī, *Tārīkh al-rusul wa-l-mulūk* (Cairo: Dār al-Ma'ārif, 1960–[77]), IX, 103 (year 225/839–40), reports the burning of "Ghannām the Apostate" (quoted in *MA*, VI, 190).

Sometimes, the executed was burned *after* his execution. At Damascus in the year 507/1113–14, a Bāṭini who had assassinated Mawdūd, the governor of Mosul, was beheaded and then burned.⁶⁹ Some hagiographical sources report that ‘Ayn al-Quḍāt’s (d. 525/1131) dead body was wrapped in a naphtha-soaked cloth and set on fire.⁷⁰ When, in 536/1141–2, Ibrāhīm al-Suhūli, a chief of the Bāṭiniyya, died, he was burned by a Saljūq *amīr* in his coffin (*fi tābūtihi*).⁷¹ The practice was continued into the seventh/thirteenth century, as is shown by a case from 615/1218 in which a group of Bāṭinīs were publicly burned.⁷²

The sixth-/twelfth-century *Tārīkh-i Bayhaq* reports that in Shawwāl 521/October 1127, the *amīr* Arqush Khātūnī came to the village of Ṭarz, and killed people there, throwing the village chief (*raʿīs*) Ḥasan Sīmīn from the local minaret.⁷³ Bāṭinīs were thrown to their death from the citadel in Aleppo in 507/1113–14.⁷⁴ According to Ibn al-Jawzī, in the month of Ramaḍān 538/March 1144, a man was arrested in Baghdad on the charge of fornication with a boy (*yuqāl annahu fasaqa bi-sabiy*). He was made to climb to the top of the minaret of the Saʿāda *madrasa* and thrown down to earth, whereupon he died.⁷⁵ This is in accordance with what a Syrian *ḥisba* manual from the sixth/twelfth century prescribes as a punishment for sodomy with a boy (*in kāna lāṭ bi-ghulām*), namely, to throw the offender from the highest building in town (*min aʿlā shāhiq fi l-balad*).⁷⁶ Sometimes people were thrown down mountain cliffs. This is what ‘Alā’ al-Dīn Ḥusayn, the king of Ghūr, did on his conquest of Ghazna in 545/1150–1. Ghazna’s notables (the chronicler Juzjānī claims the ‘Alids) were thrown down cliffs to their death.⁷⁷

Nizām al-Mulk, in his discussion of the duties of the police inspector (*amīr-i ḥaras*), mentions that he may punish people by putting them into pits (*dar chāh kardan*).⁷⁸ Later, he relates that the preacher Mazdak was executed in such a pit,

⁶⁹ Ibn al-Athīr, *Kāmil*, VIII, 597.

⁷⁰ The hagiographical accounts of ‘Ayn’s execution are analyzed by Dabashi, *Truth and Narrative*, see esp. 500.

⁷¹ Ibn al-Jawzī, *Muntaẓam*, XVIII, 17. The *amīr* was the son of ‘Abbās, who had been *shihna* of Rayy and a renowned slayer of Bāṭinīs. The reason for the burning of Suhūli’s coffin appears to have been the longlasting enmity between ‘Abbās and Suhūli.

⁷² Juwaynī, *Tārīkh-i Jahāngushā*, III, 239.

⁷³ Ibn Funduq, *Tārīkh-i Bayhaq*, 276. The account differs in Ibn al-Athīr, *Kāmil*, VIII, 702, where Ṭarz is in fact said to have been a Bāṭinī village that came under attack during an anti-Ismaʿīlī offensive instigated by Sanjar’s vizier Muʿīn al-Dīn Kāshī. According to Ibn al-Athīr, the *raʿīs* Ibn Sīmīn threw himself from the minaret.

⁷⁴ Muḥammad Rāghib Ṭabbākḥ, *Fī lām al-nubalāʾ fi tārīkh Ḥalab al-shahbāʾ* (1923, Aleppo: Dār al-Qalam al-ʿArabī, 1988), I, 415.

⁷⁵ Ibn al-Jawzī, *Muntaẓam*, XVIII, 33.

⁷⁶ Shayzarī, *Nihāyat al-rutba*, 109. For legal discussions about sodomy (*liwāt*), see ch. 5.

⁷⁷ Ibn al-Athīr, *Kāmil*, IX, 190; Juzjānī, *Ṭabaqāt-i Nāṣirī* (tr. Raverty), 353–6. This was an act of revenge, since the inhabitants of the city had ignominiously paraded and executed Ḥusayn’s brother Sayf al-Dīn Sūrī.

⁷⁸ Nizām al-Mulk, *Siyāsatnāma*, 150, as opposed to *dar zindān nihādan* (*ibid.*), which distinguishes the practice from mere imprisonment.

together with dozens of his followers, by the Sassānid king Anūshirwān. For each of the Mazdakites, the king had prepared a hole in the ground into which the victims were stuffed head first (*ū-rā sarnagūn dar īn chāh kardand*).⁷⁹ The practice of burying people alive head first is also reported under the fourth-/tenth-century ‘Abbāsīd caliphs.⁸⁰ Mas‘ūd b. Maḥmūd, the Ghaznavid ruler, supposedly was buried alive in a well (*bīr*) in 432/1040.⁸¹ Women were sometimes executed by suffocation. ‘Alā al-Dīn Ḥusayn, when venting his rage on the inhabitants of Ghazna, enclosed a group of women who had slandered his family in their songs in a bath-house and let them perish in the heat.⁸² This is reminiscent of an incident that took place in 443/1051 in Fārs, when the mother of the last Būyīd ruler of the province was put to death by being imprisoned in the *ḥammām*.⁸³

Mez claimed the trampling by elephants of the vizier Ibn Baḳīyya in 367/977–8 was the first instance of this punishment in Islamic history.⁸⁴ However, as Spuler has noted, the practice is of much older – probably Sassanian – origin.⁸⁵ The *Tārīkh-i Sīstān* reports that sulṭān Maḥmūd of Ghazna (r. 388/1030–421/1040) had people trampled to death by elephants at his court.⁸⁶ His grandson Ibrāhīm (r. 451/1059–492/1099), according to Niẓām al-Mulk, continued the tradition:

I heard that in Ghaznīn, the bakers closed the doors of their shops. Bread became expensive and difficult to find. This caused great chagrin to the non-natives and the poor. They went to the palace to explain this oppressive state [*taẓallum*] and

⁷⁹ *Ibid.*, 224. The caliph Qāhir (r. 320/932–322/934) was also reported to have buried his enemies alive. See Ibn Miskawayh, *Tajārib al-umam*, I, 284.

⁸⁰ Mas‘ūdī (d. 345/956), in his *Murūj al-dhahab*, claims the caliph Mu‘taḍid (d. 289/902) habitually used this torture technique. See Malti-Douglas, “Texts and Tortures,” 327.

⁸¹ Ibn al-Athīr, *Kāmil*, IX, 486, quoted in *MA*, IX, 486.

⁸² Ibn al-Athīr, *Kāmil*, IX, 190; Juzjānī, *Ṭabaqāt-i Nāsirī* (tr. Raverty), 353–6. The caliph Mustanjid (r. 555/1160–566/1170) was also murdered by suffocation in the bath. See *EI2*, s.v. al-Mustanjid, VII, 727a (C. Hillenbrand).

⁸³ See pp. xiv–xv of R. A. Nicholson’s introduction to Ibn al-Balkhī’s *Fārsnāma*. Spuler, *Iran in frühislamischer Zeit*, 375, claims that the most common form of executing women was by drowning, without however giving substantial references. Stuffing people into pits, or letting them perish in the heat of the bath-house, may have evoked notions of punishment in the fire of the hell-pit. For such eschatological subtexts to punishments, see chs. 3 and 4 of this study.

⁸⁴ Mez, *Renaissance*, 24; Ibn Miskawayh, *Tajārib al-umam*, II, 380, 413. See further Spies, “Über die Kreuzigung im Islam,” 155. On Ibn Baḳīyya, see further Heribert Busse, *Chalif und Grosskönig: die Buyiden im Iraq* (Beirut: Franz Steiner, 1969), 50, 238–9, passim.

⁸⁵ Spuler, *Iran in frühislamischer Zeit*, 375.

⁸⁶ Anon., *Tārīkh-i Sīstān*, 200. See also Bayhaqī, *Tārīkh-i Mas‘ūdī*, 677, quoted in Spuler, *Iran in frühislamischer Zeit*, 375. Cf. Bosworth, *The Ghaznavids*, 250. At Ghazna, there were stables (*pīl-khānas*) for more than a thousand elephants, although the number seems exaggerated. See *EI2*, s.v. Ghazna, II, 1049b (C. E. Bosworth). Abū Naṣr Muḥammad b. ‘Abd al-Jabbār ‘Utbī’s *Tārīkh-i Yamīnī* (2nd ed., Tehran: Bungāh-i Tarjama ū Nashr-i Kitāb, 1978), 158, attests to the existence of elephant stables (*marābiṭ-i afyāl*) in Ghazna under the Ghaznavids, with a special servant (*ghulam*) set over them as inspector (*shihna*). Bayhaqī, *Tārīkh-i Bayhaqī* (ed. Fayyād), 372–3, states that when in 422/1031 Mas‘ūd b. Maḥmūd went from Ghazna to the Dasht-i Shābahār to hold a *maẓālīm* court, he was mounted on an elephant, surrounded by a large procession. See *EI2*, s.v. Mawākib, VI, 853b (P. Sanders).

complained to sulṭān Ibrāhīm about the bakers. He ordered that they all be brought before him. He said [to them]: “Why have you made bread a scarce commodity?” They said: “Every time wheat and flour are brought to this city, your baker buys [everything], puts it into the storehouse and tells us: ‘I act on orders.’ He does not allow us to buy wheat, not even one *mann!*” The sulṭān ordered that his baker be brought before him and thrown under the feet of an elephant.⁸⁷

In Saljūq times, the Saljūq rulers of Kirmān carried out the punishment,⁸⁸ and their Ghuzz successors in Kirmān are known to have emulated them.⁸⁹

In the hierarchy of animals, elephants occupied a special place. Under the Saljūqs, they were much-appreciated beasts of war. Malikshāh kept elephants at Marv around 475/1082,⁹⁰ and when, some forty years later, Sulṭān Sanjar set out from Marv to battle his nephew Maḥmūd b. Muḥammad at Sāwa, he had in his forces forty elephants with troops mounted on them.⁹¹ According to the *Shāhnāma*, pictures of elephants adorned banners carried into war.⁹² The elephant, described by a fifth-/eleventh-century author from Marv as the “most noble of animals,”⁹³ symbolized military prowess and physical strength. In poetry, no less a person than the king himself was likened to it. Manūchihri, court poet of the Ghaznavid ruler Mas‘ūd b. Maḥmūd, praised his ruler as a “king with the heart and body of an elephant, sitting on an elephant [*malik-i pīl-dīl pīl-tan pīl-nishīn*].”⁹⁴ A stucco panel from Saljūq Rayy shows a king seated on a throne which rests on the backs of elephants, possibly representing the last Saljūq ruler Ṭughril III (d. 590/1194).⁹⁵ Trampling by elephants, then, was a royal punishment. It symbolized the ruler’s supreme punitive authority, adding to his aura of awe (*hayba*) and divine charisma (*farr-i īzādī*).⁹⁶ Trampling by elephants and other spectacular modes of execution were eminently public acts that activated collective memories and values and thereby aptly demonstrated the ruler’s absolute physical control over the public sphere.

⁸⁷ Niẓām al-Mulk, *Siyāsatnāma*, 85. ⁸⁸ See *LN*, s.v. *pīl*.

⁸⁹ Muḥammad b. Ibrāhīm, *Tārīkh-i Kirmān*, 145, referring to an incident in 583/1187, under the ruler Malik Dīnār (r. 582/1186–591/1194).

⁹⁰ Iskandar, “A Doctor’s Book on Zoology,” 283.

⁹¹ Ibn al-Athīr, *Kāmil*, VIII, 640; Ibn al-Jawzī, *Muntazam*, XVII, 172. ⁹² *LN*, s.v. *dirafsh*.

⁹³ Iskandar, “A Doctor’s Book on Zoology,” 282. ⁹⁴ *LN*, s.v. *pīl-dīl*.

⁹⁵ *EI2*, s.v. Fil. Iconography, II, 894a (G. M. Meredith-Owens). For a tenth-/sixteenth-century miniature showing an enraged elephant trampling two people, see *ibid.*, plate xxi. Firdawsi talks in some length about the Sassanian king Kaykhusraw’s famous “elephant throne.” See Busse, “Thron, Kosmos und Lebensbaum,” 14. Also interesting to note in this context is a water clock built by Ibn al-Razzāz al-Jazarī around 600/1203, which rests on the back of an elephant statue, a reminder, perhaps, of the animal’s cosmological symbolism. The clock has been reconstructed by Fuat Sezgin and is currently on display in the museum of the Institute of Arabic-Islamic Sciences at the University of Frankfurt, Germany. See Fuat Sezgin (ed.), *Wissenschaft und Technik im Islam*, Vol. III (Frankfurt am Main: Institut für Geschichte der Arabisch-Islamischen Wissenschaften an der Johann-Wolfgang-Goethe-Universität Frankfurt, 2003).

⁹⁶ In miniatures showing the court of Salomo (Sulaymān), elephants sometimes appear among the animals grouped around the throne with angels and jinn. See *EI2*, s.v. Fil, II, 894b (G. M. Meredith-Owens).

Maimed bodies, maimed faces

In the West, amputation of limbs in retribution for theft and highway robbery is perhaps the single most well-known Islamic punishment. In 546/1064, a law student (*mutafaqqih*) at Baghdad was found guilty of a number of offenses (*ʿamalāt*), and his hand was cut off.⁹⁷ The manager of the hospital (*ʿamil al-bimāristān*) in Baghdad was accused of fraud (*khiyāna*) in 564/1168–9. He had one hand and one foot cut off and then was taken to the hospital, where he died.⁹⁸ Such reports, however, are rare, as in general there is little mention of *sharʿa* punishments in the sources, with the exception of gibbeting (*ṣalb*), but whether this was always meant to be a *ḥadd* punishment is far from clear.

However, maiming as a public spectacle was not uncommon in Saljūq times.⁹⁹ Some of the Turkish military commanders of the Saljūq period were notorious for treating the common people with utmost cruelty. When Kūjak, the Turkish leader of a Saljūq army, besieged Baghdad in 552/1157, some of the poor people of Baghdad (*duʿafā min ahl Baghdād*) began to buy food from Kūjak’s soldiers and smuggle it back into Baghdad. Kūjak rounded a number of them up and had their noses and ears cut off. The thought of punishing his own soldiers seems not to have occurred to him.¹⁰⁰ The *amīrs* Jāwulī¹⁰¹ and Sanjarshāh (d. 605/1208–9), the governor of Jazīrat Ibn ʿUmar, were notorious for cutting off people’s hands and noses and gouging out their eyes.¹⁰² In general, however, there appears to have been strong condemnation of such practices, which may have been resented as a Turkish innovation that went against traditional Islamic notions. The last of caliph Mustanjid’s (r. 555/1160–566/1170) viziers, Ibn al-Baladī (d. 566/1170), had once punished a woman of Baghdad by having her nose cut off. After the murder of the caliph,

⁹⁷ Ibn al-Jawzī, *Muntaẓam*, XVIII, 81.

⁹⁸ Ibn al-Jawzī, *Munataẓam* (ed. Hyderabad), XI, 349.

⁹⁹ Spuler, *Iran in frühislamischer Zeit*, 373, claims that maiming of noses or ears was common, but the textual basis for this judgment seems rather slim. Spuler cites anon., *Tārīkh-i Sīstān* (ed. Bahār), 306, but there mention is made only of the “maiming [*muthla kardan*]” of a rebellious governor. Spuler also refers to Juwaynī, *Tārīkh-i Jahāngushā*, III, 224 and 250, for a case involving Bāṭinis. To this can be added the following accounts of maiming of Bāṭinis: (1) Ibn al-Athīr, *Kāmil*, VIII, 449 (a Bāṭinī under Nizām al-Mulk), 705 (in 520/1126); (2) Ibn al-Athīr, *Kāmil* (ed. Tornberg), X, 645 (a Bāṭinī held responsible for plotting the murder of the *amīr* Aqsunqur al-Bursuqī at Mosul in 520); (3) Ibn al-Jawzī, *Muntaẓam*, XVII, 63 (a Bāṭinī under Nizām al-Mulk); (4) *ibid.*, 213 (516/1122, the murderers of the vizier Simūrumī at Baghdād). Mention should also be made of maiming of dead corpses, even though it is not clear in what sense this ought to be considered a punishment: Ḥusaynī, *Zubdat al-tawārīkh*, 203 (Daguzinī); Ibn al-Jawzī, *Muntaẓam*, XVII, 307 (Ibn al-Hārūnī the vizier), 328 (the *shihna* in Baghdād). For maiming of faces in the Islamic west during the later Middle Ages, see Mediano, “Justice, crime et châtement au Maroc au 16e siècle,” 617–18.

¹⁰⁰ Ibn al-Jawzī, *Muntaẓam*, XVIII, 116.

¹⁰¹ Ibn al-Athīr, *Kāmil*, VIII, 535. Jāwulī later became the governor of Mosul. See *ibid.*, IX, 563.

¹⁰² Ibn al-Athīr, *Kāmil* (ed. Tornberg), XII, 282. From the Ottoman period, there are *firmāns* prescribing the nipping of noses and the cutting of ears as punishment for army deserters. See Peters, *Crime and Punishment*, 101.

Ibn al-Baladī was handed over to the popular leaders (*awliyāʾ al-qawm*) who retaliated against the vizier by subjecting him to the same humiliating act of defacement.¹⁰³ Clearly, Ibn al-Baladī had breached a taboo. Cutting off the nose was literally to destroy one's identity. The horror resulting therefrom was most eloquently exemplified in medieval Islamic culture by the Giza sphinx, whose noseless face resonates in its Arabic name, "Father of Terror [Abū l-Hawl]." ¹⁰⁴ Maiming of faces was a public punishment that was especially apt to intimidate and terrorize the common people. As I will show in more detail in later chapters of this study, in the medieval Muslim cultural context the notion of honor was closely associated with a person's facial integrity.¹⁰⁵

Torture (*ta'dhīb/shikanja*)

From a moral, or a sentimental, point of view, a wide variety of practices, including not only execution, but also beating or psychological maltreatment, can be considered to constitute torture.¹⁰⁶ Both the Arabic *ta'dhīb* and the Persian *shikanja* can express this meaning, that is, "infliction of severe (physical or moral) pain." There seems to be no term that denotes torture as a specific technique of inflicting pain (Fr. *supplice*) distinct from simply aggravated forms of punishment. For the purpose of the present discussion, I will consider torture first and foremost under the aspect that it relied on a special arsenal of torture instruments used in a premeditated and methodical way.

Until relatively late in the development of Islamic law, there was no judicial torture. The majority of jurists did not accept the practice as a legitimate

¹⁰³ Ibn al-Jawzī, *Muntazam*, XVIII, 191.

¹⁰⁴ Cf. *EI2*, s.v. Abū l-Hawl, I, 125b–126a (C. H. Becker). The sphinx was noseless from at least 375/985.

¹⁰⁵ For a discussion of the human face in Islamic eschatology and law, cf. pp. 163–5, 228–32. For an analysis of the face as a symbol of honor in medieval Europe, and how a disfigured face was tantamount to supreme disgrace, see Valentin Groebner, *Defaced: The Visual Culture of Violence in the Late Middle Ages* (2002, New York: Zone Books, 2004). I owe the reference to Groebner's fascinating study to Baber Johansen. Before the eighth century CE, Byzantine pretenders to the throne often had their noses cut off by their enemies, since noseless men were seen as unfit to rule. The practice continued until the time of Justinian II Rhinotmetos ("the split-nosed"), who reigned from 685 to 695 and again from 705 to 711. Justinian's nose was cut off when he was first deposed in 695, but he nevertheless regained power in 705. See Georgios Makris, "Justinian II," in Friedrich Wilhelm Bautz (ed.), *Biographisch-Bibliographisches Kirchenlexikon* (Hamm: T. Bautz, 1970–), III, 896–7. However, by the time Justinian's nose changed the reigning paradigm, the practice had already entered Islam: the Muslim conqueror of North Africa, 'Uqba b. Nāfi' (d. 63/683), allegedly had the noses of vanquished kings cut off so that they would lose their capacity to rule. See Abū 'Ubayd 'Abd Allāh al-Bakrī, *K. al-Mughrib fī dhikr bilād Ifrīqiya wa-l-Maghrib* (edited and translated by William MacGurkin de Slane, *Description de l'Afrique septentrionale*, Paris: Imprimerie Impériale, 1859), 12–14 (tr. 32–5).

¹⁰⁶ Here I follow the definition(s) offered by Edward Peters, *Torture* (Oxford: Blackwell, 1985), 1–10. As he notes, the common usage of most Western languages would support a moral, or sentimental, definition: *ibid.*, 2. Cf. the 1948 Universal Declaration of Human Rights, Article 5, stating that: "no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."

means of acquiring confessional evidence.¹⁰⁷ At best, they sometimes allowed for it as an investigative measure taken by state agencies, such as the police (*shurṭa*).¹⁰⁸ However, it would seem safe to assume that the goal of torture, even of the investigative kind, was not only to gain knowledge but also to punish. This is especially conspicuous in the case of public torture. Executions of prominent men in the Saljūq period were often preceded by torture. In 450/1059, the vizier Ibn al-Muslima was publicly exhibited and sewn up in the skin of a bull which had just been flayed. Then two iron tongs were hooked up under his jaws and he was pulled up on the gibbet while he was still alive. As the chronicler relates, “they insulted him while he was pulled up, and he remained alive until the end of the day, still moving . . . then he died.”¹⁰⁹ The vizier Darguzīnī, before his death on the gallows, was branded with a red-hot iron,¹¹⁰ and Ibn ‘Aṭṭāsh, a Bāṭinī leader, was skinned alive in 500/1107.¹¹¹ However, torture was mostly practiced inside prisons. The information that reached chroniclers from within the torture chambers is sparse. In 548/1153–4, Sanjar’s *amīr* Qumāj imprisoned the governor of the border region of Ṭukhārīstān, Zankī b. Khalīfa al-Shaybānī, together with his son. Qumāj killed the son and then made Zankī eat his flesh. Then he had the father killed too.¹¹² Ibn al-Athīr, who chronicles this gruesome incident, does not comment on it any further, as in general torture is treated rather matter-of-factly in the sources. However, it appears that torturers usually used more conventional methods than Qumāj.

¹⁰⁷ See Louis Milliot and F.-P. Blanc, *Introduction à l'étude du droit musulman* (2nd ed., Paris: Sirey, 1987), 597; Brunschvig, “Le système de la preuve en droit musulman,” *Recueils de la Société Jean Bodin* 18 (1963), 174. On the emergence of judicial torture in the writings of Islamic jurists of the Mamluk period, see Johansen, “Verité et torture: *ius commune* et droit musulman entre le Xe et le XIe siècle,” in Françoise Héritier (ed.), *De la violence* (Paris: Editions O. Jacob, 1996), 123–68; Johansen, “Signs as Evidence: The Doctrine of Ibn Taymiyya (1263–1328) and Ibn Qayyim al-Jawziyya (d. 1351),” *ILS* 9, 2 (2002), 168–93.

¹⁰⁸ Johansen, “Vérité et torture,” 130, quoting Māwardī. The official justification for torture, in both West and East, has always been the need to obtain information that was declared vital to the interests of those in power. See Brian Innes, *The History of Torture* (New York: St. Martin's Press, 1998), 8; Foucault, *Discipline and Punish*, 42. Torture in the Islamic Middle Ages was not different in this respect. The chronicles from the Būyid period abound with instances of the investigative interrogation technique known as *muṣāḍara*, rendered by Bosworth as “the mulcting of an official of his (usually) ill-gotten gains or spoils of office” (*EI2*, s.v. *Muṣāḍara*, VII, 652b [C.E. Bosworth]). See Tanūkhī, *Nishwār al-muḥāḍara* (tr. Margoliouth), 66, 69, 170; Ibn Miskawayh, *Tajārib al-umam*, I, 39, 65, 25, 76, 126, 130, 132, 243, 379, II, 109, 291, 294, 309, 358–9, 366, 414; Abū Shujā‘ Muḥammad b. al-Ḥusayn al-Rudhrāwarī, *Dhayl kitāb tajārib al-umam* (Oxford: Blackwell, 1920/1), 19, 81, 264, 315. The practice of pressing confessions for a variety of political ends continued into the Ghaznavid period. See Bayhaqī, *Tārīkh-i Bayhaqī*, 287. Cases of investigative torture under the Saljūqs include the following: (1) In 510/1116–17, the vizier of the Saljūq king of Kirmān tortured (*‘āqaba*), and later executed, a spy posing as a simple servant (*farrāsh*) serving Jāwulī, the ruler of Mosul. See Ibn al-Athīr, *Kāmil*, VIII, 615. (2) Sanjar’s vizier Fakhr al-Mulk b. Niẓām al-Mulk (d. 500/1106) tortured a Bāṭinī (*‘adhdhaba*) who had tried to assassinate him, but the Bāṭinī did not confess and was executed. See Ibn al-Jawzī, *Muntaẓam*, XVII, 55.

¹⁰⁹ Ibn al-Jawzī, *Muntaẓam*, XVI, 38. ¹¹⁰ Bundārī, *Tārīkh dawlat al-Saljūq*, 157.

¹¹¹ Ibn al-Athīr, *Kāmil*, IX, 544. ¹¹² *Ibid.*, IX, 201.

Instruments of torture used by the torturer (*jallād*)¹¹³ included the crop (*tāziyāna*) and the wooden contraption known as ‘*uqābayn*’ (“two eagles”) which consisted of two poles in between which the tortured was hung up.¹¹⁴ According to Zamakhsharī (d. 538/1144), the *falaq* (also called *miqtara*) is “a piece of wood which is bifurcated [*tuflaḡu*] to accommodate the feet of thieves [*huṣūṣ*] and offenders against morals [*dir‘ār*], and they are held down in it [*yuqattarūma fihā*].”¹¹⁵ Hence the saying also related by Zamakhsharī: “He spent the night in fear and in *falaq*, from sunset to dawn [*falḡ*],” referring, it appears, to prison inmates.¹¹⁶ Another word for the *falaq* is *dahaq*, an instrument of torture known in the fourth/tenth century that consisted of two pieces of wood which are fastened around the lower legs, or around another body part.¹¹⁷ Other fastening devices include the *dūshākha* (“two branches”), a bifurcated piece of wood that is stuck around the neck of criminals to torture, detain, or press confessions (*ifshā-yi rāzī*);¹¹⁸ the *pālhang*, originally a stirrup-leather used in war to fasten the hands of prisoners, but later also a wooden stocks for criminals;¹¹⁹ and the *kunda*, a fetter for feet similar to the *dūshākha*.¹²⁰ Iron tongs (*maqārīd*) were used in Baghdad prisons in the

¹¹³ Nizām al-Mulk seems to use the term *jallād* (lit. “flogger”) simply in the meaning of “executioner.” See his *Siyāsatnāma*, 251. The official charged with pressing confessions in *muṣādara* trials was called *mustakhrij* (“extractor of information”). See Rudhrāwarī, *Dhayl kitāb tajārib al-umam*, 264. Cf. *EI2*, s.v. *Mustakhrij*, VII, 724a (C. E. Bosworth). In the fourth/tenth century, the caliph al-Mu‘taḍid employed a torturer at his court by the name of Najāḥ al-Haramī. See Malti-Douglas, “Texts and Tortures,” 327.

¹¹⁴ Bayhaqī, *Tārikh-i Bayhaqī*, 441 (the *ṣāhib al-barīd* of Rayy, Bū l-Muzaffar, was beaten a thousand *tāziyāna* between the ‘*uqābayn*): quoted in Anvarī, *Iṣtilāḡāt-i dīwānī*, 221. Muḥammad Mu‘īn, *Farhang-i fārsī* (Tehran: Amīr Kabīr, 1963–), s.v. ‘*uqābayn*, defines the ‘*uqābayn* as two wooden staffs with eagle-shaped heads (whence the name) between which the prisoner was hung up to receive the bastonado. Steingass, *A Comprehensive Persian–English Dictionary*, 857a, relates that between the two poles “the wazīr of Nushīrwān had suspended Hamzah, sewn up in a cow-skin, whence a man in sore trouble is proverbially called *Ḥamza dar ‘uqābayn*, Hamzah between the ‘*uqābayn*”; cf. *LN*, s.v. ‘*uqābayn*. The ‘*uqābayn* is also mentioned by Ghazālī, *Naṣīḡat al-mulūk*, 114. In the ninth/fifteenth and tenth/sixteenth centuries, ‘*uqābayn* was also the name given to a spur jutting off the Shah Kabul Mountain at Kabul, opposite the Kabul fortress, possibly a place of public punishment. See Thackston, *The Baburnama*, 152 [128b]. Bayhaqī, *Tārikh-i Bayhaqī*, 287, mentions “other instruments of torture [*shikanjihā*].”

¹¹⁵ Zamakhsharī, *Asās al-balāgha* (Beirut: Dār Sādir, 1412/1992), 481b. In the West, *falaq* later became the name of particular kind of punishment, that is, bastonado.

¹¹⁶ *Ibid.*, 481b.

¹¹⁷ *MA*, IV, 213–14, quoting Ibn Miskawayh, *Tajārib al-umam*, I, 247, II, 159 (used in a *muṣādara* trial).

¹¹⁸ *LN*, s.v. *dūshākha*. *MA*, IV, 218, claims that the *dūshākha* became known only in the Mongol period, but the instrument is mentioned in a poem by Mahsatī (fl. middle of sixth/twelfth to early seventh/thirteenth century). See *LN*, s.v. *dūshākha*. On Mahsatī, see *EI2*, s.v. Mahsatī, VI, 85b (J. T. P. de Bruin).

¹¹⁹ Ibn Bibī, *Saljūqnāma* (tr. Duda), 74, 167, 170. Cf. *LN*, s.v. *pālhang*.

¹²⁰ The *kunda* is mentioned in Balkhī, *Maqāmāt-i Ḥamūdī*, 73. The explanation is given in *LN*, s.v. *kunda*, quoting Akhtar (d. 1816), *Anjuman-i ārā*. The *mīṣara*, a “pressing machine” used to crush legs, is attested for the Mamlūk period. See *MA*, IV, 207, quoting Ibn Iyās, *Badā‘i‘ al-zuhūr*, I, 117 (for a case from 685/1286–7). In the French Middle Ages, this supplee was known as *brodequin*. See Innes, *The History of Torture*, 131.

fourth/tenth century to tear flesh from people's upper legs.¹²¹ Fingernails were pulled out.¹²² Finally, a Khwārazmian source of the Saljūq period describes a wooden box with iron nails pointing inwards, which the Būyid vizier Ibn al-Zayyāt (d. 233/847) had devised to torture his victims.¹²³

Elaine Scarry has argued that the “obsessive display of agency” of the torturer serves to translate the experience of “real pain” into a “fiction of power.”¹²⁴ In political circumstances such as those of the Saljūq period, in which power was constantly contested, public torture could indeed support claims, whether fictitious or real, to legitimate authority. This does not mean that public torture was always immediately persuasive. When the Rūm Saljūq sultān ‘Izz al-Dīn Kay Kāwūs I (r. 608/1211–616/1220) besieged the Christian city of Sinop at the Black Sea in 611/1214, he tortured his prisoner, King Alexios I Komnenos (r. 1204–22), in front of the city walls in order to move the defenders of the city to surrender. If one is to believe the chronicler, the king's laments had the same effect on the inhabitants of Sinop as “the whistling of the wind on deaf rocks.” Only when Alexios was hung up head down and tortured “until he lost his senses like an epileptic” did they agree to have a messenger sent into the city to negotiate the terms of surrender.¹²⁵ If the relative indifference of the people of Sinop toward the pain of their king is surprising, the way in which Alexios himself appears to have reacted to his trial is no less than astonishing. According to the chronicler, on the day after Alexios was tortured, he and ‘Izz al-Dīn went on a pleasure ride along the coast together, “chatting amicably.”¹²⁶

What are we to make of this indifference to torture, on the part of both the spectators and the tortured victim himself? On the one hand, one may question the trustworthiness of the chronicler. It is likely that portraying Christians as heartless people, and their king as a brute, served polemical purposes.¹²⁷ On the other hand, what underlies the story of Alexios's torture is perhaps a different attitude toward pain. These were violent times, and public violence was very much a feature of daily life. Factors other than just physical pain may have contributed to definitions of what constituted punishment. Notions of honor and shame and the relationship between punishment in this world and the next were crucial building blocks in the socially construed meaning of

¹²¹ See Muḥammad b. ‘Abd al-Malik al-Hamadhānī, *Takmilat tārikh al-Ṭabarī* (Beirut: al-Maṭba‘a al-Kāthūliyya, 1959), 176, for a case from 333/944–5 in which a public preacher is tortured on the order of the vizier Ibn Shīrẓād under Mustakfī (r. 333/944–334/946). Cf. *MA*, IV, 207.

¹²² Hamadhānī, *Takmila*, 176.

¹²³ Anon. (Pseudo-Tha‘ālibī), *Tuḥfat al-wuzarā‘*, 25. A description of this box (*tannūr min khashab fīhi masāmīr ḥadd*) can be found in Ṭabarī, *Tārikh* (ed. Beirut), part 3, III, 1374–5. See also Tanūkhī, *Nishwār al-muḥādara* (tr. Margoliouth), 12. Cf. *EI2*, s.v. Ibn al-Zayyāt, Muḥammad b. ‘Abd al-Malik (D. Sourdel).

¹²⁴ Elaine Scarry, *The Body in Pain* (New York: Oxford University Press, 1985), 18, 27–8.

¹²⁵ Ibn Bībī, *Saljūqnāma* (tr. Duda), 66. ¹²⁶ *Ibid.*

¹²⁷ In another place, Ibn Bībī is emphatic, to the point of using poetical images, when describing the pain suffered by a Saljūq nobleman during his execution by stoning around 637/1240. See *ibid.*, 204–5.

punishment. If such notions were thought of as uniquely Islamic, they must have seemed less applicable to Christians such as Alexios. The deeper this study delves into the issue of what constituted punishment in the Saljūq period, the more the cultural significance of punishment will come to the fore.

Flogging and flogging instruments

Flogging is likely to have been a common punishment in Saljūq times, but it is only in the context of *histoires scandaleuses* that the punishment is mentioned in the chronicles, such as when *amīrs* or respectable scholars were flogged.¹²⁸ This indicates that flogging of such personalities was in fact rather uncommon. Thus, Nizām al-Mulk relates the story of an *amīr* at the court of Maḥmūd of Ghazna who was apprehended drunk in the market and beaten forty strokes with the rod (*chūb*) by the *muḥtasib*.¹²⁹ As for cases involving scholars, after sultān Mas‘ūd’s death in 547/1152, the caliph Muqtafi mounted a purge against pro-Saljūq men of letters in Baghdad. He deposed Abū l-Najīb, the director of the Nizāmiyya *madrasa*, publicly exposed him on a platform (*dikka zāhira*) at the Bāb al-Nūbī and had an agent of the *muḥtasib* deliver five strokes with the switch (*dirra*) to him.¹³⁰ In the same year, the caliph’s Chamberlain of the Gate (*ḥājib al-bāb*) flogged two *faqīhs* from the Nizāmiyya for resisting police officials.¹³¹

A number of beating instruments (*maqāri‘*, sing. *miqra‘a*) are mentioned in the sources.¹³² Nizām al-Mulk mentions wooden rods repeatedly as instruments of the market-inspector and the urban police (*ḥaras*).¹³³ In Persian poetry of the Saljūq period, the *shihna* often carries a wooden rod (*chūb*).¹³⁴ According to the jurist Māwardī, both the rod and the whip were used in *ta‘zīr* punishments.¹³⁵ An eleventh-century source describes a specimen of the whip (*sawf*) as being soft and swift (*mulayyin al-mahazza*), knitted tightly (*shadīd al-fatl*), with a big knotted head (*aṭla‘u l-ra‘s ‘azīm al-thamra*),¹³⁶ and as reaching from the lowest part of the spine to the base of the neck (*ya’khudhu min ‘ajb al-*

¹²⁸ Here I am not including cases of beating before execution, of which there are many. See, for example, anon., *Tārikh-i Sīstān*, 202 (a group of ‘*ayyārīn*, around 420/1030); Ibn al-Athīr, *Kāmil*, VIII, 567 (an apostate at Sarūj), XI, 147 (‘Abbās, the *shihna* of Rayy); Ibn al-Jawzī, *Muntaẓam*, XVI, 37 (the vizier Ibn al-Muslīmā).

¹²⁹ Nizām al-Mulk, *Siyāsatnāma*, 53–4. The Rum Saljūq ‘Alā’ al-Dīn Kaykubād ordered the High Chamberlain (*amīr-i pardadarān*) to receive fifty strokes at the gate of his palace in Konya. See Ibn Bībī, *Saljūqnāma* (tr. Duda), 117.

¹³⁰ Ibn al-Jawzī, *Muntaẓam*, XVIII, 84.

¹³¹ Ibn al-Athīr, *Kāmil*, IX, 197 (‘*aqabahumā*).

¹³² Sometimes the sources simply speak of a beating “instrument” (*āla*), and whether this is a whip, stick, or crop is not clear. See Nizām al-Mulk, *Siyāsatnāma*, 53. In Qalqashandī, *Ṣubḥ*, XI, 215, *āla* seems to refer to the *muḥtasib*’s *dirra*. Cf. Ibn al-Ukhuwwa, *Ma‘ālim al-qurba*, 184.

¹³³ Nizām al-Mulk, *Siyāsatnāma*, 53–4, 172.

¹³⁴ Balkhī, *Maqāmāt-i Ḥamīdī*, 73; *LN*, s.v. Adīsh (from Anvari).

¹³⁵ Māwardī, *al-Aḥkām al-sulṭāniyya*, 238. Sunāmī, *Niṣāb al-iḥtisāb*, 261, states that the *muḥtasib* may use a rod (‘*asā*).

¹³⁶ Assuming that *aṭla‘* derives from *ṭal‘* (“spadix of the palm-tree”), this appears to be a possible translation, but as far as I can see, the word is not attested elsewhere.

dhanb ilā maghriz al-‘unuq).¹³⁷ The fact that, from early on, jurists polemicized against whips with knots (*‘aqd, thamra*), because they were excessively painful (*mubarrīḥ*), attests that such whips were in fact in use.¹³⁸ Muṭarrizī (d. 609/1213) also knew of bifurcated whips.¹³⁹

Jāḥiz (d. 255/868–9) asserted that rods are used for cattle and beasts, whips in the divinely ordained punishments (*ḥudūd*) and discretionary punishments (*ta‘zīr*), and the *dirra* for educational purposes (*ta‘dīb*).¹⁴⁰ This, however, is theory, at least as far as Saljūq times are concerned. Not only did the police, as shown above, carry beating rods,¹⁴¹ but also it is not clear that, as Jāḥiz suggests, the *dirra* was any less frightful a tool of punishment than the whip. The *dirra*, or switch, was the tool of punishment commonly used by the market-inspector (*muḥtasib*). Descriptions of the *dirra* are not congruent. According to a Syrian author of the sixth/twelfth century, the *dirra* was made of ox or camel hide, filled with date stones.¹⁴² Muṭarrizī gives *mikhfaqa* (from *khafaqa*, “to vibrate”) as a synonym, which indicates that the *dirra* was not as soft as the whip.¹⁴³ An eleventh-/seventeenth-century source explains that the *dirra* is a beating instrument as thick as a finger.¹⁴⁴ ‘Umar b. al-Khaṭṭāb, often portrayed as a proto-*muḥtasib*, was said to have carried a *dirra* around all the time, in order

¹³⁷ Yūsuf b. ‘Abd Allāh Ibn ‘Abd al-Barr, *al-Istidhkār al-jāmi’ li-madhāhib fuqahā’ al-amṣār wa-‘ulamā’ al-aqār* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2000), VIII, 559. The description comes in a story about the early jurist Sha‘bī (d. c. 105/723). When someone tries to correct Sha‘bī for his supposedly incorrect use of Arabic, Sha‘bī threatens him with the whip, using the above-quoted formula, which his critic is unable to comprehend. Also, in Abū l-Qāsim ‘Alī b. al-Ḥasan ibn Hibat Allāh Ibn ‘Asākir, *Tārīkh madīnat Dimashq* (Beirut: Dār al-Fikr, 1995–2001), XXV, 378: Sha‘bī inveighs against a person called Khanīs the chicoree-seller (*al-‘allāk*).

¹³⁸ Māwardī, *al-Aḥkām al-sulṭāniyya*, 238, states that the majority of Shāfi‘īs disapprove of whips with a knotted end (*thamra*). Cf. Burhān al-Dīn ‘Alī b. Abī Bakr b. ‘Abd al-Jalīl al-Marghinānī, *al-Hidāya sharḥ al-Bidāya* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1975), II, 97 (from Abū Ḥanīfa). See also the long commentary by Kamāl al-Dīn Muḥammad b. ‘Abd al-Wāḥid Ibn al-Humām, *Fath al-qadīr* (Beirut: Dār al-Fikr, n.d.), V, 230. According to Ibn al-Humām, the Prophet himself would have refused to use whips with knots. Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Qurtubī, *Tadhkirat aḥwāl al-mawtā wa-umūr al-ākhira* (Cairo: Maṭba‘at al-Ḥalabī, 1400/1980), 444, says the Prophet warned against “whips that are excessively big, and against going beyond what is legitimate educative beating [*mā yajūzu bihi l-ḍarb fī l-ta‘dīb*],” adding that such practices were well known in the lands of Islam until his own day. Cf. Sunāmī, *Niṣāb al-iḥtisāb*, 261.

¹³⁹ Cited in Ibn al-Humām, *Fath al-qadīr*, V, 230.

¹⁴⁰ Jāḥiz, *K. al-Bayān wa-l-tabyīn*, III, 60–1, quoted in MA, II, 7.

¹⁴¹ In fact, among the primary punitive duties of the *amīr-i ḥaras*, according to Niẓām al-Mulk, was the bastonado (*chūb zadan*), that is, to punish people by beating them with a wooden stick. See his *Siyāsatnāma*, 53 (the story of ‘Alī Nūshtikīn), 151.

¹⁴² Shayzarī, *Nihāyat al-rutba*, 108. Cf. Golius and Freytag, *Lexicon Arabico-Latinum*, who identified the *dirra* as “a string of ox-hide [*nervus taurinus*]”: quoted in Edward William Lane, *An Arabic–English Lexicon* (London and Edinburgh: Williams and Norgate, 1863–), I, 804a.

¹⁴³ Nāṣir b. ‘Abd al-Sayyid al-Muṭarrizī, *al-Mughrib fī tarīḥ al-mu‘rib* (Aleppo: Maktabat Usāmah ibn Zayd, 1979–82), I, 262.

¹⁴⁴ ‘Abd al-Ra‘ūf b. Tāj al-‘Arīfin al-Munāwī, *Fayḍ al-qadīr* (Cairo: al-Maktaba al-Tijāriyya al-Kubrā, 1356/[1937–8]), IV, 208, describes the *dirra* as “a whip of leather the end of which [*tarfuhā*] is strengthened [*marshdūd*] and the width of which [*‘aradhā*] is like that of a finger,” adding that it is used for inquisitorial torture: “They beat people with it, for example those suspected of theft so that they say the truth with regard to what was stolen.”

to admonish people. Thus, the poet Sanā'ī could beg his patron to “put things in order like ‘Umar with his *dirra* [*yā chun ‘Umar bi-dirra jahān-rā qarār dih*].”¹⁴⁵

The Persian word *tāziyāna* appears to refer to a somewhat lighter beating instrument, like the crop used in horseriding.¹⁴⁶ The word also designates the actual stroke with the same tool.¹⁴⁷ In historiography and poetry the *tāziyāna* often appears in conjunction with the above-mentioned *‘uqābayn*, as in the satirical verse by the Ismā‘īlī poet Nāṣir-i Khusraw (d. between 465/1072 and 471/1078): “There is no better religion than the one adopted / for fear of *‘uqābayn* and *tāziyāna* [*z-īn bih nabūd madhhabī ki gīrī / az būm-i ‘uqābayn u tāziyāna*].”¹⁴⁸ The verse suggests that people suspected of heterodoxy could receive flogging as punishment. ‘Aṭṭār relates a story of an old man who is suspended in the *‘uqābayn* and flogged with the *tāziyāna* for defending the old Mu‘tazilite theologoumenon that the Qur‘ān is created.¹⁴⁹

In the same way in which the *dirra* was sanctioned by the model of ‘Umar, the *tāziyāna* in the hands of state officials expressed the authority of the ruler. Khāqānī says that the fear inspired by the *tāziyāna* strengthens the ruler’s throne (*as shīb-i tāziyāna-yi ū ‘arsh-rā hirās*).¹⁵⁰ The obscene poet Sūzānī praises the virility of his patron by likening (sexual) domination over his enemies to flogging with the *tāziyāna*.¹⁵¹ The whips, switches, and sticks carried around by the *muḥtasibs* and the agents of police served as visible reminders of punishment. They were conspicuous signs of the punitive authority of the state.

Shaming (*tashhūr*)

The punishment of shaming figures prominently in the sources from Saljūq times.¹⁵² This practice is usually called *tashhūr* (lit. “to make, or to be made,

¹⁴⁵ *LN*, s.v. *dirra*.

¹⁴⁶ For synonyms, see *LN*, s.v.v. *akilat al-laḥm*, *aṣḥalī*, *tāzāna*, *tāzana*, *chābuq*, *chubchurgha*, *chamchurga*, *dum-i gāw*, *zūla*, *sayyāt*, *mikhfaqa*.

¹⁴⁷ Bayhaqī, *Tāriḫ-i Bayhaqī*, quoted in Anvarī, *Iṣṭilāḥāt-i diwānī*, 221.

¹⁴⁸ Quoted in *LN*, s.v. *ānah*; Anvarī, *Iṣṭilāḥāt-i diwānī*, s.v. *‘uqābayn*.

¹⁴⁹ *LN*, s.v. *īzār*. However, the victim could also simply be bound to a tree. See Rāwandī, *Rāḥat al-ṣudūr*, 384 (a case from 592/1196 on the order of the Khwārazmshāh, because of looting): cited in Spuler, *Iran in frühislamischer Zeit*, 372.

¹⁵⁰ *LN*, s.v. *tāziyāna*.

¹⁵¹ *LN*, s.v. *gawsār*: “bi qahr kardan-i khaṣm ay shāh Faridūn-i farr / zi tāziyāna-yi tū gurz-i gāwsar-i tū bād.”

¹⁵² In the West, the concept of shaming criminals in the pillory or the stocks was well known throughout the Middle Ages and beyond. Ignominious parades were also common. See Hans Peter Dürr, *Nacktheit und Scham* (Frankfurt am Main: Suhrkamp, 1988), 275–82. For punishment in the context of the medieval European “culture of shame,” see Auffarth, *Irdische Wege und himmlischer Lohn*, 82–3; Dürr, “Beichte,” in Hubert Cancik, Burkhard Gladigow, and Matthias Laubscher (eds.), *Handbuch religionswissenschaftlicher Grundbegriffe* (Stuttgart: Kohlhammer, 1988–2001), II, 116–19. In 1815, the pillory was officially abolished in Great Britain, except for as punishment for perjury (until 1837). In Delaware, USA, the pillory remained a punishment until as late as 1905. See *Oxford English Dictionary*, s.v. pillory. For ignominious parades in Islam, see, in addition to the Saljūq material presented in this chapter,

public”)¹⁵³ and consists in an ignominious parade on a donkey, cow, or camel through the city. *Tashhūr* often preceded other punishments, such as flogging and execution, but it could also be a punishment in its own right.¹⁵⁴ It is sometimes known as *tajrīs*, a denominative of *jaras* (“bell”), which refers to the practice of announcing the condemned with bells during the parade,¹⁵⁵ or fastening bells to his head.¹⁵⁶

From the frequency with which *tashhūr* is mentioned in the sources, it would not seem unreasonable to infer that shaming was a public punishment of crucial importance in the administration of penal justice. It was a punishment that could draw huge crowds. Thousands of people are reported to have attended *tashhūr* processions.¹⁵⁷ The parade often went through the whole city, passing in front of the ruler’s palace and through markets and other public spaces.¹⁵⁸ The condemned’s head was either exposed in disgrace, or covered with demeaning hats or hoods, his face blackened with charcoal or smut, and his hair and beard shaved off. A state agent led the condemned through the city while flogging him and announcing his crime to the public. In addition to suffering verbal abuse and being spat on by the mob, earth and dust was thrown at the victim, or impure items such as pieces of rotten meat,

Spuler, *Iran in frühislamischer Zeit*, 372, who collects a number of cases, dating from the years 723, 758 (in Khurāsān), 840, 910, 919, 934, and 990; *MA*, III, 213–62. Ignominious parades were also known in nineteenth-century Tunis under the Ottoman Beys, but discontinued in the middle of the century. See Brunshvig, “Justice religieuse et justice laïque,” 51, 64.

¹⁵³ Peters, *Crime and Punishment*, 34, 98, 196, renders *tashhūr* as “public exposure to scorn,” but I do not find this translation convincing. It presupposes that there was “scorn” on the part of the audience of this punishment, and misses what I think is the crucial dimension of shame.

¹⁵⁴ Mention should also be made of the public display and ignominious parade of executed bodies. Cf. Ḥusaynī, *Zubdat al-tawārīkh*, 203, 238–9; Ibn al-Jawzī, *Muntaẓam*, XVII, 63, 91, XVIII, 55, 84; Ibn al-Athīr, *Kāmil*, VIII, 449, 456, 596, IX, 17 (Bāṭinis), 188, 508; anon., *Mujmal al-tawārīkh*, 410; Rāwandī, *Rāḥat al-sudūr*, 260–1 (*amīrs*). However, this practice lies somewhat outside the scope of this study. For a short analysis of the practice, see Mediano, “Justice, crime et châtement au Maroc au 16e siècle,” 621–2.

¹⁵⁵ Tyan, *Histoire*, 650. See the cases from Fāṭimid Egypt where bells are attached to the condemned so that they announce their parade (and their guilt) to the public (*jarrasa* ‘*alā nafsihī*’), quoted in *MA*, III, 242, 243. In the seventh/thirteenth century, the ombudsman of the ‘Alids in Mosul paraded (*jarrasa*) an impostor (falsely) claiming descent from the ‘Alids. See Abū l-Ḥasan ‘Alī b. Mūsā Ibn Sa‘īd al-Andalusī, *al-Ghuṣūn al-yānī’a fī maḥāsīn shu‘arā’ al-mī’a l-sābita* (Cairo: Dār al-Ma‘ārif, 1968), 63: “wa-l-tajrīs an yunādā ‘alayhi: Hādhā jazā’! wa-yushharu bayna l-nās.” I owe this reference to Manfred Kropp.

¹⁵⁶ Ibn al-Athīr, *Kāmil*, IX, 152.

¹⁵⁷ Khwāndamīr, *Ḥabīb al-siyar*, I, 377, says that close to one hundred thousand people witnessed the public parade of the Ismā‘īlī warlord Ibn ‘Aṭṭāsh at Iṣfahān in 500/1107.

¹⁵⁸ The *tashhūr* of the vizier Ibn al-Muslima in 450/1058 started from the caliphal residence on the eastern shore in Baghdad, then went “through the quarters of the western shore,” including the al-Karkh suburb, before returning to the palace. See Ibn al-Jawzī, *Muntaẓam*, XVI, 37–8. The market was also the *locus* of honorary parades of individuals: in 541/1146–7, Ibn al-Markham was invested with the office of *qādī* in Baghdad and “shown around in the markets [*rifa bihi fī l-aswāq*],” with a *ṭaylasān* on his head instead of a *ṭarṭūr* (for which see below). See *ibid.*, XVIII, 48.

sandals and shoes, and even excrement. Stones were also thrown,¹⁵⁹ which indicates that *tashhīr* was not only disgraceful for the condemned but in fact life-threatening.¹⁶⁰ When in 542/1147–8 a spy was paraded in Mahdiyya in modern-day Tunisia, he was stoned to death by an enraged mob.¹⁶¹

The jurists discuss the punishment in the context of perjury (*shahādat al-zūr*).¹⁶² To bear false witness was considered a grave sin,¹⁶³ and instances of parading of perjurers are indeed known from Saljūq Baghdad.¹⁶⁴ However, in addition to perjury, a plethora of offenses are mentioned in the historical sources. In 543/1148–9 the caliph at Baghdad incited the common people (*‘amma*) to rise up against the Saljūq *amīrs* and the police prefect [*shihna*] of the city. The Saljūq faction prevailed, and many of the *‘amma* “were either taken captive or killed, and others were paraded [*shuhhira*].”¹⁶⁵ In 484/1091–2, under sulṭān Malikshāh, the Arab tribe of the Banū ‘Āmir raided Wāsiṭ. One of their leaders, an Egyptian by the name of Tilyā the Astrologer (*al-munajjim*) was arrested, paraded, and eventually gibbeted to death.¹⁶⁶

The sources, however, talk about the *tashhīr* of all kinds of small criminals, swindlers, tricksters, and offenders of morals and religion. These are in the most part men, but women are also mentioned. In 535/1140–1, a man claiming to be an ascetic (*mutazahhid*) convinced a group of people that two of the rightly guided early caliphs, ‘Umar b. al-Khaṭṭāb and ‘Alī b. Abī Ṭālib, had appeared to him in a dream, indicating to him the place where a son of ‘Alī was buried. Indeed, upon excavating the site, a body was produced. The grave became a spontaneous place of pilgrimage. People put rose-water and incense on it, took earth for blessings, and “whoever got possession of a piece from his burial shroud felt as if he possessed a kingdom.”¹⁶⁷ However, when the cadaver began to develop an unpleasant smell people became suspicious. Eventually, a man among the spectators identified the corpse as that of his father. When his father’s grave was opened, the body was found to be missing. The *mutazahhid* fled, but was captured and confessed. As punishment, “he was taken, made to sit on a donkey, and paraded.”¹⁶⁸

¹⁵⁹ *Ibid.*, X, 268, quoted in *MA*, III, 250.

¹⁶⁰ Baber Johansen has pointed out to me that the Museo della tortura in Milan, Italy, exhibits evidence that public parading in medieval Italy was not a mere matter of dishonor, but a punishment that could result in severe physical harm.

¹⁶¹ Ibn al-Athīr, *Kāmil*, IX, 152.

¹⁶² For a discussion of the legal context of *tashhīr*, see ch. 6 of this study.

¹⁶³ Bukhārī, *Ṣaḥīḥ*, II, 939, VI, 2457; Abū l-Ḥusayn b. al-Ḥajjāj al-Qushayrī Muslim al-Nisābūrī, *Ṣaḥīḥ* (Beirut: Dār Iḥya’ al-Turāth al-‘Arabī, n.d.), I, 92; Nasā’ī, *Sunan*, II, 289, III, 492, VI, 322; Tirmidhī, *Sunan*, III, 513, V, 235; Bayhaqī, *al-Sunan al-kubrā*, VIII, 20, X, 121; Ibn Ḥanbal, *Musnad*, II, 201, III, 134. Cf. pp. 240–1.

¹⁶⁴ Ibn al-Jawzī, *Muntaẓam*, XVII, 264 (in 525/1131), for three professional witnesses who had accepted bribes and were publicly paraded and beaten at the Bāb al-Nūbī. See also *MA*, III, 247, 250, quoting Ibn Khallikān, *Wafayāt al-a’yān*, I, 167.

¹⁶⁵ Ibn al-Athīr, *Kāmil*, IX, 162. ¹⁶⁶ *Ibid.*, VIII, 337.

¹⁶⁷ Ibn al-Jawzī, *Muntaẓam*, XVIII, 8. ¹⁶⁸ *Ibid.*, XVIII, 9.

Other criminals such as deceitful merchants,¹⁶⁹ thieves,¹⁷⁰ grave-robbers,¹⁷¹ or even cannibals¹⁷² are occasionally mentioned in the sources as being paraded. Infringements against sexual mores were also punished with public parade. Thus, in 473/1080–1, the *muhtasib* of Baghdad threatened to parade those who neglected to cover their private parts in bath-houses.¹⁷³ Female prostitutes and singers were paraded on donkeys in East Baghdad in 467/1074–5, “calling against themselves [*munādiyātin ‘alā anfusihiinna*]” and then banished to the western shore.¹⁷⁴ In 531/1136–7, four women were paraded in the markets with their faces painted black, because they had been found drinking intoxicating drinks in the company of men on the banks of the Tigris river.¹⁷⁵ Drinking alcohol in conjunction with indulging in music appears to have been prosecuted regularly, as when Maghribī the Preacher was led to the Bāb al-Nūbī, “his head uncovered,” because the police had found a jar of wine and instruments of amusement in his house.¹⁷⁶

Generally speaking, violations of orthodoxy appear to have been another reason for *tashhīr*. A miller was paraded in Baghdad in 571/1175–6 for blasphemy.¹⁷⁷ In the year 521/1127, a *madrassa* teacher (*mudarris*) underwent *tashhīr* on charges of engaging in a heretical reading of the Qurʾān:

On Sunday, the 20th of Shawwāl [October 10th], a page of a booklet [*kurrāsa*] was found in the hands of a man who had bought it and was getting rid of it together with stacks of paper. On the page were lines of the Qurʾān. In between each pair [of lines] were lines of poetry rhyming with the last word of the [Qurʾānic] verse. They searched for the person who had written this. There was a *madrassa* teacher whose name was Ibn

¹⁶⁹ *Ibid.*, XVII, 336. Nāṣir-i Khusraw, *Rihla*, 105, quoted in *MA*, III, 243.

¹⁷⁰ However, the only instances in the fifth/eleventh and sixth/twelfth centuries that I know of are from Egypt. See Muṣabbiḥī, *Akhbār Miṣr*, 19, 71, 107, and Nāṣir-i Khusraw, *Rihlat*, 105, quoted in *MA*, III, 242, 243.

¹⁷¹ ‘Abd al-Razzāq b. Aḥmad Ibn al-Fuwaṭī (d. 723/1323), *al-Ḥawādiṭh al-jāmiʿa*, 306–7, quoted in *MA*, III, 251.

¹⁷² Ibn al-Jawzī, *Muntaẓam*, XVII, 66. This preceded the cannibals’ execution, of which, however, nothing more is known.

¹⁷³ *Ibid.*, XVII, 73.

¹⁷⁴ *Ibid.*, XVI, 166. Calling out the offense to the public (*tasmīr*), either by an agent of the repressive authorities or by the condemned him- or herself, was an integral part of the *tashhīr* punishment. Cf. Mediano, “Justice, crime et châtement au Maroc au 16e siècle,” 624: “It is essential that the condemned acknowledge his fault in front of everybody. His message is that the punitive ritual has fulfilled its function, that the order disrupted by the offense is restored, and that, after public degradation, the purity of the inculpated and of society is safeguarded.” For legal views of *tasmīr*, cf. pp. 235–6.

¹⁷⁵ Ibn al-Jawzī, *Muntaẓam*, XVII, 323. Another instance of parading women is that of a woman in 559/1163–4, who had two husbands. One of the husbands was paraded with her. See *ibid.*, XVIII, 160.

¹⁷⁶ *Ibid.*, XVIII, 9. See also XVIII, 84: in 547/1152–3, the poet al-Ḥisbīs was led away from his house barefoot. “As he walked he was insulted, and was taken to the prison for common criminals [*ḥabs al-luṣūṣ*].” It should be noted that all these cases are related by Ibn al-Jawzī, whose puritanical attitude is well known, as demonstrated by his exceptional interest in *tashhīr*. Cf. Leder, *Ibn al-Ḡawzī*, 157–219.

¹⁷⁷ Shams al-Dīn Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Dhahabī, *Tārīkh al-Islām wa-wafayāt al-mashāhīr wa-l-aʿlām* (Beirut: Dār al-Kitāb al-‘Arabī, 1985–), XL, 13.

al-Adīb. They raided his house [*kubisa baytuhu*] and found a number of pages in the same style. He was taken to the ministry [*dīwān*] and interrogated, and he confessed. He was one of the companions of Abū l-Futūh.¹⁷⁸ He was made to sit on a donkey [*ḥummila ‘alā ḥimār*], paraded through the city [*shuhhira fī l-balad*] and his crime was publicly announced [*nūdiya ‘alayhi*]. The ‘amma wanted to burn him.¹⁷⁹

In 567/1171–2, Abū l-Faṭḥ, a professor at the Nizāmiyya *madrasa*, began a lecture explaining that some theologians claimed that God is not an existent (*laysa bi-mawjūdīn*).¹⁸⁰ The vizier made Abū l-Faṭḥ appear before him. “Have you found nothing better in the sciences?” he asked him. Then he had his face painted black and Abū l-Faṭḥ was paraded around the city on a donkey.¹⁸¹ Ibn al-Jawzī also reports that Shī‘īs were paraded in Baghdad. As mentioned earlier, a group of mat-makers was paraded by the market-inspector for having written the names of the twelve imāms on their mats.¹⁸² A similar fate awaited Badī‘, a friend of the *ṣūfīs* and a preacher to the people of Baghdad.¹⁸³ After his arrest,

he was carried to the *dīwān*. In his house clay tablets were confiscated. On them were written the names of the Twelve Imāms. People suspected that he was a Rāfiḏī [that is, a Shī‘ī]. He was paraded [*shuhhira*] at the Bāb al-Nūbī, his head uncovered. He was beaten [*uddiba*] and confined to his house.¹⁸⁴

Tashhīr of Bāṭinīs appears to have been fairly common. The Ismā‘īlī warlord Ibn ‘Aṭṭāsh, commander of the fortress of Shāhdiz, as mentioned above, was paraded at Iṣfahān in 500/1107. When the fortress fell to sulṭān Muḥammad, Ibn ‘Aṭṭāsh was captured and shown around in all of Iṣfahān

¹⁷⁸ Abū l-Futūh al-Isfarā‘inī, Ibn al-Adīb’s fellow scholar, was a Shāfi‘ite who had come from Khurāsān to teach in Baghdad and had irritated the local Ḥanbalites by holding that the recited Qur’ān was God’s word only in the figurative sense. See Ibn al-Jawzī, *Muntaẓam*, XVII, 245. For the riots in 521/1127 and 538/1143 provoked by Isfarā‘inī’s preaching, see Berkey, *Popular Preaching*, 59. It seems that the caliph had Ibn al-Adīb paraded in order to cater to anti-Khurāsānian and anti-Ash‘arite sentiment among the Baghdad populace. See Simha Sabari, *Mouvements populaires à Bagdad à l’ époque ‘abbasside IXe–XIe siècles* (Paris: Maisonneuve, 1981), 116, for popular protests against the teaching of Ash‘arism in the Nizāmiyya *madrasa* in 469/1077.

¹⁷⁹ Ibn al-Jawzī, *Muntaẓam*, XVII, 245–6.

¹⁸⁰ An extreme form of anthropomorphism or “transcendentalism [tanzīh],” this position of early Islamic theology rejected that God could be described with anything that could be used to describe other things, including the term “thing [shay]” or even “existent [mawjūd].” Jahm b. Safwān (d. 128/746) was imputed with this view. See van Ess, *Theologie und Gesellschaft*, V, 215. Later Mu‘tazilite theologians such as Abū l-Hudhayl (d. c. 226/840–1) and his student Hishām al-Fuwaṭī (d. before 218/833) also leaned toward this position. See *ibid.*, II, 499, IV, 233–5.

¹⁸¹ *Ibid.*, XVIII, 196. ¹⁸² *Ibid.*, XVIII, 159.

¹⁸³ He was also a friend of Abū l-Najīb, the teacher at the Nizāmiyya who was flogged in 547/1152. See Ibn al-Athīr, *Kāmil*, IX, 197; Ibn al-Jawzī, *Muntaẓam*, XVIII, 84.

¹⁸⁴ Ibn al-Jawzī, *Muntaẓam*, XVIII, 84; Mez, *Renaissance*, 309, comments that the Bāṭinīs, “incorporating within its [Bāṭinism’s] bosom many old Mesopotamian doctrines, followed the Mesopotamian method too, in setting its records down on clay tablets.”

(*fī jāmi' al-balad*), while thousands of spectators stood by. He was then skinned alive, “showing endurance [*tajallada*]” before his death, his skin stuffed with chaff (*tanban*), and his head taken to Baghdad, presumably to be exposed there to the public.¹⁸⁵

The *tashhūr* of Ibn ‘Aṭṭāsh is one of a number of high-profile cases of public parading in the Saljūq period.¹⁸⁶ Another famous case is the ignominious parade and execution of the Ghūrīd chief Sayf al-Dīn Sūrī in 544/1149. Sayf al-Dīn had occupied Ghazna for a time but, given the pro-Ghaznavid sentiments of the local populace, was not able to hold the city for long. When Bahrāmshāh, the exiled Ghaznavid ruler, returned to his capital, the Ghaznavid soldiers of the city went over to their old lord. Sayf al-Dīn was captured and paraded through the city on a cow, his face painted black. As Ibn al-Athīr relates, “they made poems about this in which they slandered him, and even the women recited them.”¹⁸⁷ Another chronicler, a partisan of the Ghūrīds, described the event in the following words:

Two camels were brought, and Sulṭān Sūrī was seated upon one, and his vizier, Sayyid Majd al-Dīn Mūsawī, was placed on the other, and they were both publicly exposed about the streets of Ghaznīn, and, from the housetops dust, ashes, and excrement were launched upon their sacred heads until they reached the head of the Yak-Ṭāq bridge of the city. When they reached that place, Sulṭān Sūrī and his vizier Sayyid Majd al-Dīn Mūsawī were gibbeted, and they were both hanged from the bridge.¹⁸⁸

However, perhaps the most famous case of public parading (*tashhūr*) in the Saljūq period is that of caliph Qā'im's vizier Ibn al-Muslima in 450/1058.¹⁸⁹ Before the Saljūq army under Tughril captured Baghdad in 447/1055, the city had been in the hands of the army general Basāsīrī, an ally of the Fāṭimids in Egypt. On Tughril's approach, Basāsīrī fled, and Ibn al-Muslima, who had been instrumental in inviting Tughril to Baghdad, seized Basāsīrī's and his family's property. Shortly thereafter, however, in 450/1058, Tughril had to leave Baghdad to crush a revolt in Khurāsān. Basāsīrī entered Baghdad a second time, taking revenge on Ibn al-Muslima by subjecting him to the public spectacle of *tashhūr*. This is recorded at some length in the sources:

¹⁸⁵ Ibn al-Athīr, *Kāmil*, VIII, 544; Khwādamīr, *Ḥabīb al-siyar*, I, 377. Cf. LN, s.v. Aḥmad b. ‘Abd al-Malik ‘Aṭṭāsh. For the conquest of Shāhdiz, see also Husaynī, *Zubdat al-tawārīkh* (ed. Iqbal), 79; anon., *Mujmal al-tawārīkh*, 410; Rāwandī, *Rāḥat al-sudūr*, 160; Hodgson, *Order of the Assassins*, 95–6; Turan, *Selçuklar tarihi*, 229.

¹⁸⁶ Mention should also be made of the vizier Ḥasanak, who was ordered to strip and be publicly exposed before his ignominious execution. See Bayhaqī, *Tārīkh-i Bayhaqī*, 174. A case of *tashhūr* in conjunction with exile appears to be described in Ibn al-Bībī's chronicle of the Rūm Saljūqs. Following sulṭān ‘Alā’ al-Dīn Kayqubād's (r. 618/1221–634/1236) great purge of rebellious *amīrs*, the *amīr* Bahā’ al-Dīn Qutlughja was made to sit on a mule and exiled to Tuqāt, “weeping and lamenting.” See Ibn Bībī, *Saljūqnāma* (tr. Duda), 120.

¹⁸⁷ Ibn al-Athīr, *Kāmil*, IX, 164, 190. ¹⁸⁸ Jūzjānī, *Ṭabaqāt-i Nāsirī* (tr. Raverty), 441–5.

¹⁸⁹ See on this vizier EI2, s.v. Ibn al-Muslima, III, 891a–892a (C. Cahen).

On the 28th of Dhū l-Hijja [February 2nd], Abū l-Qāsim Ibn al-Muslima was brought out from his prison in the outer ring of the caliphal city [*al-ḥarām al-zāhir*] in fetters. He was wearing a cloth of rough wool [*jubbat sūf*], a hat [*tarṭūr*] made of red felt, and around his neck was a collar of skins [*mikhnaqatun min al-julūd*], in the manner of amulets. He was made to sit on a camel and paraded [*īfā bihi*] in the quarters of the western shore. Behind him went someone beating him with a whip . . . He was shown around in the city [*shuhhira fī l-balad*]. When he passed by the people of Karkh, they threw old pairs of sandals [*khulqān min al-madāsāt*] at him and spat in his face. He was cursed and insulted in all quarters, until he returned to stop in front of the entrance to the palace.¹⁹⁰

Ibn al-Muslima was then gibbeted, in a gruesome act of public torture, at the Khurāsān gate.

Elements of the tashhīr punishment

The case of Ibn al-Muslima contains many elements typical of *tashhīr* and may therefore serve to illustrate a number of points. It is interesting to note that while Ibn al-Jawzī relates that Ibn al-Muslima sat on a camel, the chronicler Ḥusaynī claims he sat on a donkey.¹⁹¹ Like cows, domestic asses were not commonly used as riding animals by people of high rank and consequently may have contributed to the shame of condemned.¹⁹² A horse and dignified robe of silk or cotton, rather than a coarse shirt of wool, were the marks of a gentleman. The dishonor of the condemned could be heightened by making him sit backwards.¹⁹³ The shame was also increased by the official charged with flogging the condemned, as well as by another official who sometimes

¹⁹⁰ Ibn al-Jawzī, *Muntazam*, XVI, 37–8. The enmity of the Shīrites of al-Karkh was motivated by the fact that Ibn al-Muslima had invited the Saljūqs into the city, which brought about the final demise of the pro-Shīrite Būyid dynasty. See Ibn al-Athīr, *Kāmil*, VIII, 156, who comments that the Shīrites were angry at Ibn al-Muslima “because he had mistreated them on sectarian grounds.”

¹⁹¹ Ḥusaynī, *Zubdat al-tawārīkh*, 62; also in Ibn al-Tiḡtaqā, *Fakhri*, 217. Cf. *LN*, s.v. *bar khar nishāndan*, a synonym of “to make public [*tashhīr kardan*].”

¹⁹² Donkey meat was considered *ḥarām* (except by the Ḥanbalites, who held it to be *makrūh*), even though touching the animal was *a priori* unharmed. See *EI2*, s.v. Ḥayawān, III, 308a (C. Pellat). However, not only donkeys, but also cows and camels, were used in *tashhīr*. Bābak was paraded on an elephant before his execution in 223/838. See *EI2*, s.v. Bābak, I, 844a (D. Sourdel). Ibn Baqiyya also sat on an elephant. See Spuler, *Iran in frühislamischer Zeit*, 372.

¹⁹³ While I cannot find references to this practice under the Saljūqs, it is attested in the *ḥadīth* (where Jews punish adulterers in this way). See Sulaymān b. al-Ash‘ath Abū Dāwūd al-Sijistānī (d. 275/889), *Sunan* (Beirut: Dāral-Fikr, [n.d.]), IV, 155. According to tradition, the Prophet condemned the practice. In 578/1182–3, a group of Byzantine prisoners were paraded sitting backwards on camels at Alexandria. See Ibn Jubayr, *Rihla*, 31, quoted in *MA*, III, 250. The practice was common in Taqī al-Dīn Aḥmad b. ‘Abd al-Ḥalīm Ibn Taymiyya’s time. See his *Fatāwa* (Riyadh: Maṭābi‘ al-Riyāq, 1383/[1963–4]), XXVIII, 120.

walked in front in order to announce his crime to the public.¹⁹⁴ In 431/1040, when Bādīs, the ruler of Granada, paraded his vizier Abū l-Futūḥ al-Jurjānī, a harsh and fat black servant (*aswadu faẓẓun ḍakhmun*) followed Abū l-Futūḥ, slapping him without interruption.¹⁹⁵ When Abū l-Dulaf Muḥammad b. Hibat Allāh (d. 513/1119) was paraded at Baghdad, he was followed by a slave (*ghulam*) beating him with a *dirra* and announcing his offense to the people.¹⁹⁶

As for the *ṭarṭūr* hat that was put on Ibn al-Muslima's head, this was an icon of humiliation that was used rather frequently in *tashhīr* processions, but perhaps more in Egypt and Syria than in Iraq and Persia.¹⁹⁷ Dozy explains that “the burghers considered the Bedouins' great hat a perfectly ridiculous head gear, and they would put a *ṭarṭūr* on the head of criminals, or of a defeated enemy, whom they paraded ignominiously through the streets.”¹⁹⁸ It may be that when Tilyā the Astrologer, mentioned above as the leader of a raid by the Bedouin Banū 'Āmir into Wāsiṭ, was paraded at Baghdad in 484/1091–2, the *ṭarṭūr* served as a marker of the Bedouin context of his punishment.¹⁹⁹ The *ṭarṭūr* was a brimless²⁰⁰ and perhaps conical hat, and Shayzarī specifies that it “should be made of felt, variegated with coloured pieces of cloth, adorned with onyx, seashells, bells and the tails of foxes and cats.”²⁰¹ The Syrian Ibn Bassām (fl. seventh/thirteenth c.) and the Andalusian Ibn al-Khaṭīb (d. 776/1375) mention that the *muḥtasib* should hang a *ṭarṭūr* at the door of his booth in the market in order to intimidate offenders.²⁰² Other

¹⁹⁴ Ibn Khallikān, *Wafayāt*, V, 153, quoted in *MA*, III, 246; Ibn al-Athīr, *Kāmil*, IX, 152. *Qāḍī* courts employed an official known as the *munāḍī* (“caller”) whose job consisted in going to the markets and public places and speaking out loud on court-related matters, including criminal law cases. See Hallaq, *The Origins and Evolution of Islamic Law*, 90. It is tempting to conjecture that the *munāḍī* was in fact identical to the official who accompanied the *tashhīr* procession. However, the chronicles give us no indication that this was indeed the case. In fact, it seems that *tashhīr* was a punishment most often administered by the *muḥtasib*. Sometimes the condemned were made to call out against themselves: Ibn al-Jawzī, *Muntaẓam*, XVI, 166 (Baghdad, 467/1074). Peters, *Crime and Punishment*, 34, says *tashhīr* processions were preceded by a “town-crier.”

¹⁹⁵ Lisān al-Dīn Abū 'Abd Allāh Muḥammad b. Sa'īd Ibn al-Khaṭīb, *al-Iḥāṭa fī akhbār Gharnāṭa* (Cairo: Dār al-Ma'ārif, 1956), 462–6.

¹⁹⁶ Ibn al-Jawzī, *Muntaẓam*, XVII, 172. In 557/1161, Ibn al-Nizām, a teacher in the Nizāmiyya, was beaten publicly at the Bāb al-Nūbī and dismissed because he had married a woman but left her (without means of subsistence). See *ibid.*, XVIII, 152.

¹⁹⁷ Ibn al-Athīr, *Kāmil*, VIII, 337 (at Baghdad in 484/1091–2), IX, 152 (at Mahdiyya in 542/1147–8); Ibn al-Athīr (ed. Tornberg), IX, 625 (at Baghdad in 448/1056–7), quoted in *MA*, III, 244; Maqrīzī, *Khiṭaṭ*, II, 18 (at Cairo in 529/1134–5), quoted in *MA*, III, 247.

¹⁹⁸ Dozy, *Dictionnaire détaillé*, 268. Dozy takes his examples from Aḥmad b. 'Abd al-Wahhāb al-Nuwayrī's (d. 733/1333) and Ibn Iyās's (d. c. 930/1524) histories of Egypt.

¹⁹⁹ Ibn al-Athīr, *Kāmil*, VIII, 337. After this incident, the *ṭarṭūr* is not mentioned again by either Ibn al-Jawzī or Ibn al-Athīr.

²⁰⁰ Yedida Kalfon Stillman, *Arab Dress: A Short History* (2nd rev. ed., Leiden: Brill, 2003), 100. Stillman comments that the *ṭarṭūr* is attested as early as the first/seventh century, but she does not discuss it in the context of *tashhīr*. See *ibid.*, 18–19.

²⁰¹ Shayzarī, *Nihāyat al-rutba* (tr. Buckley), 124.

²⁰² Tyan, *Histoire*, 650, citing Ibn Bassām, *Nihāyat al-rutba*, 150; Ibn al-Khaṭīb, *Iḥāṭa*, II, 319.

garments of ridicule included red hoods (*barānis*, sing. *burnus*)²⁰³ and red shirts made of felt.²⁰⁴ The repeated reference in the sources to the color red is noteworthy, but somewhat difficult to explain.²⁰⁵

Another feature of *tashhīr* is the fastening of necklaces or other items around the necks of the condemned, as happened to Ibn al-Muslima.²⁰⁶ The secretary Abū l-Dulaf b. Hibat Allāh, when paraded in 513/1119 at Baghdad, carried around his neck necklaces made of cords, bones, and dung (*makhāniqu min baram wa-‘izām wa-ba‘r*).²⁰⁷ Such amulets may have referenced illicit magical practices.²⁰⁸ They certainly contributed to heaping further impurity on the condemned, in addition to the old sandals, saliva, dust, and excrement coming from the spectators.²⁰⁹ An especially violent version is the fastening of amputated body parts around the neck of the condemned. Thus, in 494/1101 at Damghān, a convicted cannibal had the hand of his victim fastened around his neck in the ignominious parade.²¹⁰ In Baghdad, a grave-robber carried his own amputated hands.²¹¹

Tashhīr was a punishment that was directed against the face and the head more than any other body part. When heads were not covered with the *ṭarṭūr*

²⁰³ Ibn al-Athīr, *Kāmil* (ed. Tornberg), IX, 69, 600, 602. See further *MA*, III, 243.

²⁰⁴ Ibn al-Athīr, *Kāmil* (ed. Tornberg), IX, 69, 602, 625.

²⁰⁵ It is tempting to see in the cases in which Fāṭimid officials used red garments as signs of ridicule a reference to the (anti-Shi‘ī) Umayyads. On the first day of his governorate in the year 60/679, ‘Amr b. Sa‘īd b. al-‘As sat on the minbar in Medina in a red shirt and a red turban, which earned him the contempt of the people. See ‘Abd al-Malik b. Ḥusayn al-‘Āṣimī al-Makkī al-Iṣāmī, *Samt al-nujūm al-‘awālī fi anbā’ al-awā’il wa-l-tawālī* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1419/1998), III, 164–5. The banner of Mu‘āwiya at the battle of Ṣiffin was red. See ‘Athamina, “The Black Banners and the Socio-Political Significance of Flags and Slogans,” 311. In Persian *tā’ziyya* plays, the Umayyad troops are traditionally clad in red. However, the Saljūq chronicles also relate instances in which officials of the caliph or the Sunnī sultān dressed victims of *tashhīr* in red. See Ibn al-Athīr, *Kāmil* (ed. Tornberg), IX, 625; Ibn Khallikān, *Wafayāt al-‘ayyān*, V, 153, quoted in *MA*, III, 246.

²⁰⁶ Ibn al-Jawzī, *Muntaẓam*, XVI, 37–8; Ibn al-Ṭīqtaqa, *Fakhrī*, 217.

²⁰⁷ Ibn al-Jawzī, *Muntaẓam*, XVII, 172; Ibn Khallikān, *Wafayāt al-‘ayyān*, V, 153, quoted in *MA*, III, 246.

²⁰⁸ Even though the religious establishment did not consider amulets strictly *ḥarām*, it frowned upon their use. See Johann Christoph Bürgel, *The Feather of the Simurgh: The “Licit Magic” of the Arts in Medieval Islam* (New York: New York University Press, 1988), 27–52; Toufic Fahd, “Magic in Islam,” in Mircea Eliade (gen. ed.), *The Encyclopedia of Religion* (New York: Macmillan, 1987), IX, 104–9; Fahd, “Sciences naturelles et magie dans Ghāyat al-Ḥakīm (d’Abū Maslama l-Madjrīṭī),” in Emilio Garcia Sanchez (ed.), *Ciencias de la naturaleza en al-Andalus* (Granada: Consejo Superior de Investigaciones Científicas, 1990), I, 11–21.

²⁰⁹ However, as is pointed out by Ze‘ev Maghen, “Close Encounters: Some Preliminary Observations on the Transmission of Impurity in Early Sunnī Jurisprudence,” *ILS* 6, 3 (1999), 362, human saliva is not in itself conceived to be polluting according to the early jurists. Only excretions such as urine, blood, pus, and vomit are always polluting. See also Maghen, “First Blood: Purity, Edibility, and the Independence of Islamic Jurisprudence,” *Der Islam* 81, 1 (2004), 51.

²¹⁰ Ibn al-Jawzī, *Muntaẓam*, XVII, 66.

²¹¹ Ibn al-Fuwaṭī, *al-Ḥawādith al-jāmi‘a*, 306–7, quoted in *MA*, III, 251.

or some other hood, they were exposed²¹² or shaved.²¹³ Likewise, shaving or plucking out the beard was not uncommon.²¹⁴ Most conspicuously, however, the faces of the victims of *tashhīr* were blackened.²¹⁵ This served to deprive the culprit of his identity as an individual, to literally deface and to dehumanize him.²¹⁶ In addition, it is relevant to note in this context that the idiom “to blacken someone’s face [*sawwada wajhahu*]” is used in classical Arabic to denote the idea of dishonor.²¹⁷ In *tashhīr*, the expression was taken rather literally. When the scholar Abū l-Faṭḥ was paraded at Baghdad in 567/1171, the vizier ordered that a pot filled with soot (*būtaqat al-sawād*) be brought.²¹⁸ According to the fourth-/tenth-century lexicographer Anbārī, a synonym of *sawwada wajhahu* is *sakhkhama wajhahu*, a derivative of the noun *sukhām*, which is “the black of the cooking pot [*sawād al-qidr*],” that is, the soot that accumulates on its bottom,²¹⁹ or the “dust of black smut of the cooking pot [*ghurāb sawād al-qidr*].”²²⁰ Another variant, *ḥammama wajhahu*, is a derivative

²¹² Ibn al-Jawzī, *Muntaẓam*, XVIII, 9, 84; Ibn Khallikān, *Wafayāt al-a’yān*, I, 167, quoted in *MA*, III, 250.

²¹³ *MA*, III, 242, quoting Ibn al-Khaṭīb, *Iḥāṭa* (ed. Dār al-Ma‘ārif), 462–6, for the vizier Jurjānī (paraded in 431/1039–40 at Granada).

²¹⁴ According to Ḥusaynī, *Zubdat al-tawārīkh*, 62, Ibn al-Muslima’s beard was plucked out. Dozy, *Dictionnaire détaillé*, 269, refers to an incident of shaving the beard reported in Ahmad b. ‘Abd al-Wahhāb al-Nuwayrī’s (d. 733/1333) *Nihāyat al-‘arab fī funūn al-adab*. Forcibly shaving or plucking out the beard was known from early times in Islam. The *qādī* Hishām b. Hubayra, for example, in 65/684, ordered the heads and beards of merchants guilty of fraud to be shaved as punishment. See Muḥammad b. Khalaf b. Ḥayyān Wakī’, *Akhbār al-quḍāt* (Beirut: ‘Ālam al-Kutub, [198–]), I, 300. Ibn ‘Umar (d. 605/1208–9), the governor of al-Jazīra, was notorious for shaving the beards of his subjects (*ra’iyya*), “in numbers that cannot be counted [*mā lā yuḥṣā*].” See Ibn al-Athīr, *Kāmil* (ed. Tornberg), XII, 282. For more cases, see *MA*, IV, 27–38. The practice is an ancient Near Eastern way of showing contempt. Hamun, king of the Ammonites, had half the beards of David’s servants shaved off (II Samuel, X, 4–5).

²¹⁵ Ibn al-Jawzī, *Muntaẓam*, XVII, 323, 336; Ibn al-Athīr, *Kāmil*, IX, 164, 190; Dhahabī, *Tārīkh al-Islām*, XL, 13.

²¹⁶ Cf. Malti-Douglas, “Texts and Tortures,” 329.

²¹⁷ For more on this idiom, cf. pp. 228–9. For the eschatological dimensions of black faces, cf. pp. 165–6.

²¹⁸ Ibn al-Jawzī, *Muntaẓam*, XVIII, 196.

²¹⁹ Abū Bakr Muḥammad b. al-Qāsim Ibn al-Anbārī, *al-Zāhir fī ma‘ānī kalimāt al-nās* (Beirut: Mu‘assasat al-Risāla, 1412/1992), II, 75; ‘Alī b. Isma‘īl Ibn Sīda, *al-Muḥkam wa-l-muḥīṭ al-a‘zam* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2000), V, 472; Muḥammad b. Mukarram Ibn Manzūr, *Lisān al-‘arab* (Beirut: Dār Ṣādir, [1955]), XII, 202; Muḥammad b. Ya‘qūb al-Firūzābādī, *al-Qāmūs al-muḥīṭ* (Beirut: Mu‘assasat al-Risāla, 1994), I, 1430. See also Muḥammad Amīn b. ‘Umar Ibn ‘Ābidīn, *Hāshiyat radd al-muḥtār ‘alā al-durr al-mukhtār* (Beirut: Dār al-Fikr, 1421/2000), VII, 238.

²²⁰ Zayn al-Dīn b. Ibrāhīm Ibn Nuḡaym, *al-Baḥr al-rā‘iq sharḥ Kanz al-daqa‘iq* (Beirut: Dār al-Ma‘rifa, n.d.), VII, 127, who speaks of “the dust of black smut of the cooking pot [*ghurāb sawād al-qidr*].” Cf. also the (related?) expression *sukhām al-qaṣr* in Abū Dulaf al-Khazrajī’s *qaṣida Sāsāniyya*, referring to the “blackness of the stokehold” visible on the bodies of beggars and tricksters (Banū Sāsān) who crawl into kilns (*qaṣr*) to seek refuge from the cold, and then emerge covered in dusty ashes, “like a group of panthers.” See Bosworth, *The Medieval Islamic Underworld*, II, 197–8 (verse 56), 208 (verse 136), 275–6.

of *ḥumam*, meaning “embers.”²²¹ Such was the stuff with which faces were blackened in the *tashhīr* procession.²²²

In sum, *tashhīr* was not at all a “simple” punishment. In fact, more than any other punishment of the time, *tashhīr* bears the marks of a fully fledged public ritual, a ritual that possessed its own language rich in hidden meanings.²²³ In later chapters of this study, there will be occasion to go beyond this description of the punishment by examining its religious and legal dimensions. Suffice it for now to say that *tashhīr* was a public drama addressed to an audience whose precarious life-situation made them sensitive toward the kind of symbolism in which the punishment was clothed.

Imprisonment

Heretofore punishments directed against life, body, and honor have been discussed. In order to complete the survey of punishments in the Saljūq period, I shall now consider punishments consisting in the deprivation of the freedom to move. While banishment served, first and foremost, to take high government officials out of the political game, punitive detention was a punishment suffered by the meek as well as the powerful. The two practices, confinement and exclusion, were, in a sense, seen as two sides of the same coin.²²⁴ In fact, “banishment from the earth [*nafy min al-ard*],” one of the Qur’ānic punishments stipulated for “doing corruption on earth” (5:33), could be understood to mean not only exile, but also imprisonment. In a third-/ninth-century poem

²²¹ Muḥammad Shams al-Ḥaqq al-‘Aẓīmābādī, ‘*Awn al-ma’būd sharḥ sunan Abī Dawūd* (2nd ed., Beirut: Dār al-Kutub al-‘Ilmiyya, 1995), XII, 87, has a commentary on the tradition about the Jews of Medina who blackened the face of a fornicator, cited by Aḥmad b. Muḥammad al-Naḥḥās, *Ma’ānī l-Qur’ān* (Mecca: Jāmi‘at Umm al-Qurā, 1409-/1988-), II, 311; Abū Dāwūd, *Sunan*, IV, 154; Aḥmad b. Muḥammad Abū Ja’far al-Ṭaḥāwī, *Sharḥ ma’ānī al-āthār* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1399/[1979]), IV, 142; Ṭaḥāwī, *Sharḥ mushkil al-āthār* (Beirut: Mu’assasat al-Risāla, 1408/1987), XI, 440.

²²² Peters, *Crime and Punishment*, 34, states that blackening of faces with soot was “a punishment especially reserved for false witnesses.” This impression cannot be corroborated from the Saljūq sources, nor is it clear that *tashhīr* was directed *primarily* against false witnesses. Cf. pp. 237–43.

²²³ It is tempting to think of *tashhīr* processions followed by execution as a rite of passage, that is, as a state of “liminality” between life and death. Cf. Victor Turner, *The Ritual Process: Structure and Anti-Structure* (Chicago: Aldine Publishing, 1969), 94–113, 125–30. However, while the ritual process tends to elevate the ritual subject and to lead him/her upwards, *tashhīr* is a fall from grace or, as it were, a negative rite of passage. The concept of “liminality” thus seems to apply not in the Turnerian sense, but in that of rendering the condemned an “object,” thereby achieving the opposite of empathy among the spectators. Cf. my discussion of *tashhīr* as ritual on pp. 168–75.

²²⁴ See also Tūṣī, *Akhlāq-i Nāsirī* (tr. Wickens), 231, who discusses detention (*ḥabs*), imprisonment (*qayd*), and exile (*nafy*) as the just ruler’s main tools of punishment, corporal punishment and execution occupying lower ranks.

an imprisoned poet lamented that “we’re banished from the world though still / in her we dwell, not dead and not alive.”²²⁵

Punitive detention, as the author of the only existing study of the institution in premodern Islam suggests, played perhaps a more important role in practice than it did in theory.²²⁶ As that author notes, “[t]he question in which cases and how often imprisonment was imposed in legal practice as a punishment, and whether it was used as often as corporal punishment, can only be answered by the study of historical or biographical literature.”²²⁷ Given the relative paucity of information regarding punitive imprisonment in the Saljūq chronicles, I can only begin to contribute to this field of inquiry. Further complicating the task is the fact that it can be difficult to decide whether imprisonment was in fact a punitive measure or not. The Arabic *ḥabs* (“detention”; cf. the Persian *ḥabs kardan*, or often simply *bāz dāshtan*, “to detain”) is ambiguous in this respect, and the sources, as a rule, do not provide much context.

Members of the ruling strata of Saljūq societies were often imprisoned in the kind of dungeons that are known to have existed during the fifth/eleventh and sixth/twelfth centuries in the fortresses at Tikrīt,²²⁸ Mosul,²²⁹ Sarjahān (near Zanjān),²³⁰ Barḥīn (near Karaj),²³¹ Hamadhān,²³² Farzīn (between Iṣfahān and Hamadhān),²³³ Rayy,²³⁴ Balkh,²³⁵ and Tirmidh,²³⁶ and elsewhere.²³⁷ Often these dungeons seem to have been squalid subterranean

²²⁵ Abū l-Layth Naṣr b. Muḥammad b. Aḥmad al-Samarqandī, *Tafsīr* (Beirut: Dār al-Fikr, n.d.), I, 411; Samʿānī, *Tafsīr* (Riyadh: Dār al-Waṭan, 1418/1997), II, 34. The poem, adduced as a commentary to Qurʾān 5:33, “they [i.e., those who wage war on God] are banished from the land [*yunfaw min al-arḍ*],” is attributed to the vizier al-Faḍl b. Yaḥyā al-Barmakī, whom caliph Harūn al-Rashid had imprisoned from 187/803 until his death in 190/805. See Abū l-Fidāʾ Ismāʿīl b. ʿUmar Ibn Kathīr, *al-Bidāya wa-l-nihāya* (Beirut: Dār al-Maʿārif, 1966–), X, 212.

²²⁶ Irene Schneider, “Imprisonment in Pre-Classical and Classical Islamic Law,” *ILS* 2, 2 (1995), 157. Beyond the scope of my study are all forms of non-punitive detention, which the jurists discuss in the context of imprisonment for debt (until one paid the debt or was proven impecunious), apostasy (up to three days), and pre-trial detention. See *EI2*, s.v. *Sidjn*, IX, 547b (I. Schneider). Punitive detention is mentioned in the context of *taʿzīr*. Kāsānī (d. 587/1189), for example, mentions imprisonment as a punishment for the lower classes. See ʿAlāʾ al-Dīn Abū Bakr b. Masʿūd al-Kāsānī, *Badāʾiʾ al-ṣanāʾiʾ fī tartīb al-sharāʾiʾ* (Beirut: Dār al-Kitāb al-ʿArabī, 1982), VII, 64. For a historical overview of the practice of imprisonment in medieval al-Andalus, see Cristina de la Puente, “En las cárceles del poder: prisión en al-Andalus bajo los Omeyyas (ss. II/VIII–IV/X),” in Maribel Fierro (ed.), *De muerte violenta: política, religión y violencia en al-Andalus* (Madrid: Consejo Superior de Investigaciones Científicas, 2004), 103–33.

²²⁷ *EI2*, s.v. *Sidjn*, IX, 548a (I. Schneider).

²²⁸ Ibn al-Jawzī, *Muntaẓam*, XVIII, 48, 330; Ibn al-Athīr, *Kāmil*, VII, 330, VIII, 478, IX, 148; anon., *Mujmal al-tawārikh*, 410; Būndārī, *Tārīkh dawlat āl Saljūq* (ed. 1900), 153.

²²⁹ Ibn al-Athīr, *Kāmil*, IX, 225. ²³⁰ Ḥusaynī, *Zubdat al-tawārikh*, 221.

²³¹ Ibn al-Athīr, *Kāmil*, VIII, 677, 683.

²³² Anon., *Mujmal al-tawārikh*, 408, 413; Ḥusaynī, *Zubdat al-tawārikh*, 216.

²³³ Anon., *Mujmal al-tawārikh*, 414. ²³⁴ Ibn al-Athīr, *Kāmil*, VIII, 429.

²³⁵ *Ibid.*, IX, 117. ²³⁶ *Ibid.*, VIII, 407; Ḥusaynī, *Zubdat al-tawārikh* (ed. Iqbal), 86.

²³⁷ According to Guy LeStrange, *The Lands of the Eastern Caliphate* (Cambridge: Cambridge University Press, 1901), 481, there was a prison in the fortress of Shāsh (Tashkent) in the fourth/tenth century. The castle of Rāmhurmuz served as a kind of state prison to the Būyids. See Ibn Miskawayh, *Tajārib al-umam*, II, 111–14, 246, 367, *passim*.

vaults (*sirdāb*) in which prisoners died of cold in winter.²³⁸ When in 541/1146–7 sultān Mas‘ūd imprisoned his brother Sulaymānshāh in the castle of Tikrīt, the *amīr* Jāwulī, appalled by Sulaymānshāh’s fate, is reported to have exclaimed: “If this sultān can do this to his brother . . . then how will he treat me, who is not related to him?”²³⁹ While executions in the dungeons of the castles were common (see chapter 1), high-ranking members of the military élite could also be imprisoned there for life.²⁴⁰

A different kind of prison awaited the members of the civilian élite. There existed, in addition to the castle dungeons, private prisons inside the rulers’ palaces, or even within the harem.²⁴¹ For example, the ‘Abbāsīd vizier ‘Amīd al-Dawla Muḥammad b. Jahīr was imprisoned inside (*fī bāṭin*) the caliph’s palace at Baghdad in 493/1099.²⁴² When in 541/1146–7 a maid in the caliph’s palace caused a fire, the caliph allegedly woke up and released the prisoners (*maḥbūsūn*) to rescue them from the flames.²⁴³ This would suggest that in proximity to the ruler’s private rooms there was a prison in which, perhaps, viziers and other high government officials,²⁴⁴ as well as scholars and literati, were detained. It would be difficult to imagine that men like the jurist Sarakhsī (d. c. 490/1096),²⁴⁵ the scholar-poet ‘Ayn al-Quḍāt al-Hamadhānī

²³⁸ Ibn al-Jawzī, *Muntaẓam*, XVIII, 6 (at Hamadhān). Cf. *ibid.*, XVII, 282 (at Baghdad). The Ghaznavīd rulers imprisoned Bāṭinis from the Rayy region in places such as Bust (in Afghānistān) and in eastern Khurāsān, many of them perishing during their incarceration. See Gardīzī, *Tārīkh-i Gardīzī*, 91. In Saljūq times, however, the rule appears to have been to execute them without further ado.

²³⁹ Husaynī, *Zubdat al-tawārīkh*, 221.

²⁴⁰ Arslānkhān’s son, the Qarakhānīd ruler Kamāl al-Dīn, was captured by the Khwārazmshāh Atsız in 547/1152–3 and jailed for life. See Bosworth, “The Political and Dynastic History of the Iranian World,” 146.

²⁴¹ The ‘Abbāsīd caliph Mu‘tadīd had incorporated a prison into his palace at Baghdad in 280/893, but then the prison was pulled down by Muktafī in 289/902. See *EI2*, s.v. Baḡhdād, I, 897b–898a (A. A. Duri).

²⁴² Ibn al-Jawzī, *Muntaẓam*, XVII, 60; Ibn al-Athīr, *Kāmil*, VIII, 438; Ibn al-Ṭīqtaqā, *Fakhrī*, 218.

²⁴³ Ibn al-Jawzī, *Muntaẓam*, XVIII, 48.

²⁴⁴ Abū l-Ma‘ālī al-Iṣfahānī, the vizier of the caliph Mustazhīr, was held in prison for eleven months in 495/1101. See Ibn al-Jawzī, *Muntaẓam*, XVII, 76. In 526/1131–2, Mustarshīd imprisoned the vizier Sharaf al-Dīn in his palace and kept him there for three months, while his soldiers plundered the vizier’s house. See *ibid.*, XVII, 272. Maḥmūd’s vizier Abū l-Qāsim al-Darguzīnī (d. 527/1133) was imprisoned on suspicion of intrigue, but released a year later and made vizier for a second term. See Ibn al-Athīr, *Kāmil*, IX, 6. However, that conditions for imprisoned viziers may have been better does not mean their lives were safe: the vizier al-Burūjirdī died in prison (*māta maqbūdan*), after sultān Mas‘ūd chased him out of office and handed him over to his successor al-Marzubānī in 539/1144–5. See *ibid.*, IX, 134. In the reign of al-Mustanjīd, the celebrated Ibn Ḥamdūn, ex-minister of finance, was thrown in prison, dying there in 562/1166. See *EI2*, s.v. Ibn Ḥamdūn, III, 784a (F. Rosenthal). It appears that sultān Sanjar kept prisoners at Marv, perhaps at his palace at Andarāba two leagues from the city (see LeStrange, *Lands of the Eastern Caliphate*, 401), but it cannot be known under what conditions. See Ibn al-Athīr, *Kāmil*, VIII, 409, 421. After defeating the king of Ghūr, ‘Alā’ al-Dīn Husayn, in 547/1152, Sanjar kept him as prisoner “with himself” (*Husayn-rā asīr bā khīshān dāshit*). See Nishāpūrī, *Saljūqnāma* (ed. Morton), 60.

²⁴⁵ *EI2*, s.v. al-Sarakhsī, IX, 35b (N. Calder).

(d. 525/1131),²⁴⁶ or the grammarian Ibn Ma'mūn (d. 584/1188)²⁴⁷ could have continued their literary production in the squalor of the fortress dungeons.

While the dungeons of the castles and the prisons in the palaces partook of the private realm of punishment over which the ruler presided, urban prisons are also known to have existed. The references to punitive imprisonment of commoners in the sources, however, are tantalizingly brief. The Ḥanafī Kāsānī accepted punitive detention as a discretionary punishment (*ta'zīr*), but only within limits: such imprisonment, he asserted, was not for the military élite or the jurists themselves, only for the lower classes.²⁴⁸ One gets but glimpses of what appears to have been the presence of urban prisons in the great urban centers of the Saljūq domain.²⁴⁹ Ḥamīd al-Dīn al-Balkhī (d. 559/1163–4), a judge in Balkh and author of the *Maqāmāt-i Ḥamīdī*, offers a rare description of such a prison. The protagonist of Balkhī's sixth *maqāma* relates how, passing by the police station (*bih dar-i ḥaras*) drunk, he is arrested by the night-patrol (*ʿasas*):

They made me walk undressed [? *sayr ʿuryān kardand*]²⁵⁰ and with exposed head and feet [*sar u pāy birahna*] I was brought into the police prefect's prison [*zindān-i shihna*]. There they gave me over to the care of the prison guard [*jallād*]. For two months I stayed in prison, alongside thieves and criminals. Not a single friend was aware of my situation, and no one came to see me. Until one day, in order to make me beg for them, they took me like a beggar to the prison's gate, telling me to beg and ask for money. There I stood on the Great Street, with stocks [*kunda*] around my legs, a coarse cloak on my back, a piece of cloth [*khirqā*] on my head, and a begging bowl in my hand.²⁵¹

The practice of making prisoners beg for alms in the streets was known throughout the Islamic Middle Ages. The Ḥanafī Abū Yūsuf (d. 182/798) argued that the public treasury should spend more money on maintaining the prisons so that prisoners would not roam about the streets in shackles begging.²⁵² The historian Maqrīzī (d. 8456/1442) reports that prisoners in the public prison in the Cairo citadel, whose cries of hunger were heard in the

²⁴⁶ *EI2*, s.v. ʿAyn al-Kuḍāt, XII (Suppl.), 104b–105a (J. K. Teubner). For the imprisoned poet Mas'ūd-i Sa'd-i Salmān (d. c. 515/1121) and his prison-poems, the *ḥabsiyyāt*, see Sunil Sharma, *Persian Poetry at the Indian Frontier: Mas'ūd Sa'd Salmān of Lahore* (New Delhi: Permanent Black, 2000); Arberry, *Classical Persian Literature*, 81–3. Mention should also be made of the celebrated Ḥallāj, who spend eight years in prison within the caliphal precinct at Baghdad. Toward the end of his imprisonment, a separate cell was built for him inside the great chamberlain's palace (*dār al-ḥijāba*), where Ḥallāj was allowed to receive visitors. See Louis Massignon, *La passion de Husayn Ibn Mansūr Hallāj* (1922, Paris: Gallimard, 1975), I, 523–4, 548. In the Saljūq context, the poet Khāqānī (d. 595/1199) and his prison poems, the *Ḥabsiyyāt*, deserve attention.

²⁴⁷ On Ibn al-Ma'mūn, see *LN*, s.v. Aḥmad b. ʿAlī b. Hibat Allāh.

²⁴⁸ Kāsānī, *Badāʾī al-ṣanāʾī*, VII, 64.

²⁴⁹ See, for example, *EI2*, s.v. Nīshāpūr, VIII, 62b (C. E. Bosworth).

²⁵⁰ The editor gives *siparam* ("my shield") as alternative reading for *sayr*.

²⁵¹ Balkhī, *Maqāmāt-i Ḥamīdī*, 73.

²⁵² Abū Yūsuf, *K. al-Kharāj*, quoted in *EI2*, s.v. Sidjīn, IX, 548a (I. Schneider).

streets, received alms from the populace, which, however, the prison guards kept for themselves.²⁵³

From Balkhī's account it becomes clear that public prisons were run by the police prefect (*shihna*), and that the latter's troops (*haras*, 'asas) could arrest people and put them into jail without further ado. While in fourth-/tenth-century Baghdad there was a "police prison" (*ḥabs al-ma'ūna*), in Saljūq times one hears of a "prison for criminals" (*ḥabs al-jarā'im*) and a "prison for thieves" (*ḥabs al-luṣūṣ*). Contrary to what Kāsānī prescribed in theory, jurists could very well end up in these prisons – this was precisely because imprisonment in the public prisons implied, as Kāsānī knew very well, that the prisoner enjoyed little social prestige. In 547/1152, Abū al-Najīb al-Suhrawardī, professor of Shāfi'ī *fiqh* at the Nizāmiyya *madrasa*, was sent to the "prison for common criminals" by the caliph, for allegedly conspiring against him,²⁵⁴ as was the *faqīh* Yazīd in 551/1156–7.²⁵⁵ In 547/1152–3, the poet Ḥiṣbīṣ was taken to the "prison for thieves" on charges of the same crime.²⁵⁶ In the chronicles, there are also references to commoners who were punished with imprisonment,²⁵⁷ including on account of theft – a crime for which Islamic law usually prescribes amputation of the hand.²⁵⁸ Such cases may help to explain why jurists sometimes spoke out against replacing *ḥadd* punishments with imprisonment.²⁵⁹

As the passage by Balkhī suggests, conditions in urban prisons were hardly comfortable. A Khwārazmian mirror for viziers written in the early seventh/thirteenth century instructs the vizier to inspect the urban prisons every month, to release those whose punishment (*ta'dībuhu*) and time of imprisonment had ended, or those whose crime (*dhanb*) was light, or others who were able to find someone to buy their freedom by paying a ransom. The vizier is also reminded not to imprison people for life, "for this is like killing someone [*fa-innahu naw'un min al-imāta*]."²⁶⁰ Such passages indicate that survival in

²⁵³ Maqrīzī, *Khiṭaṭ*, II, 187, quoted in *EI2*, s.v. Sidjīn, IX, 548a (I. Schneider).

²⁵⁴ Ibn al-Jawzī, *Muntazam*, XVIII, 84, 116–17. Abū al-Najīb al-Suhrawardī, uncle of the famous founder of the Suhrawardiyya order and himself a celebrated *sūfī*, died in 563/1168. On his biography, see Menahem Milson, *A Sufi Rule for Novices: Kitāb Adāb al-Murīdīn of Abū al-Najīb al-Suhrawardī* (Cambridge: Harvard University Press, 1975), 10–16. According to Ibn al-Jawzī, *Kāmil*, IX, 197, two jurists from the Nizāmiyya were put in prison by the caliph for attacking his agents who had come to the Nizāmiyya in order to confiscate a deceased *faqīh*'s property.

²⁵⁵ Ibn al-Jawzī, *Muntazam*, XVIII, 116–17. ²⁵⁶ *Ibid.*, XVIII, 84.

²⁵⁷ *Ibid.*, XVIII, 126 (a man who had drowned his infant daughter in 553/1158–9). One wonders if the mystic 'Abd al-Karīm b. Hawāzin al-Qushayrī was kept in the same prison in 446/1054. Cf. *EI2*, s.v. al-Ḳushayrī, V, 527a (H. Halm).

²⁵⁸ Ibn al-Athīr, *Kāmil*, VIII, 561 (a slave-girl and her lover for arson and theft).

²⁵⁹ Māwardī, *Adab*, I, 227, quoted in Schneider, "Imprisonment," 163 n. 37.

²⁶⁰ Anon. (Pseudo-Tha'ālibī), *Tuhfat al-wuzarā'*, 58–9. The practice of prison inspection was indeed followed by a vizier in the early fifth/eleventh century in Baghdad. See Mez, *Renaissance*, 223–4.

public prisons was not only precarious, but also that people ran the danger of disappearing into them for the rest of their lives.²⁶¹ Such a fate was rather unlike that of the biblical Joseph whom Pharaoh had released from prison after a period of time (see Qurʾān 12:14–35, 26:29). When the former minister of finances ʿAzīz al-Dīn al-Mustawfī was imprisoned by Sanjar’s vizier Darguzīnī, he sent Darguzīnī a poem in which he compared himself to the wolf which had been suspected falsely of having killed Joseph. By conjuring up the beloved biblical figure, Mustawfī implied that, like Joseph, he deserved to be forgiven by Pharaoh and let out of prison. However, his strategy backfired. It appears that Darguzīnī was not at all flattered by the comparison. He replied with another poem flatly rejecting Mustawfī’s request.²⁶²

Banishment and exile

The pre-Islamic custom of banishment from the tribe (*khalʿ*) continued to be a common punishment in early Islam, as is shown by the many cases of banished brigand-poets (*ṣaʿālik*) in the Umayyad period.²⁶³ The ʿAbbāsīd caliphs also, up to Saljūq times, used the punishment widely, even if the banished were now more often high government officials rather than bedouin-brigands.²⁶⁴ No comprehensive study of the topic seems to have been undertaken.²⁶⁵ However,

²⁶¹ See Māwardī, *al-Aḥkām al-sulṭāniyya*, 220: “With regard to repeated offenders who are not deterred by the prescribed punishments, the executive officials are allowed, if the people suffer harm from their crimes, to keep them permanently imprisoned until they die, so as to protect the people from their harm. Their food and clothing must be provided from the treasury [*bayt al-māl*]:” quoted in Peters, *Crime and Punishment*, 31.

²⁶² Khwāndamīr, *Dastūr al-wuzarāʾ*, 204–5. ʿAzīz al-Dīn’s poem reads: “gar tū zi nigāh-i man khabar dāshta-ī / chūn gurg-i ʿazīz-i Miṣr pandāshta-ī / man gurg-i ʿazīz-i Miṣr-am, ay ṣadr, bi-kun / bā gurg-i ʿazīz-i Miṣr gurg-āšta-ī” (“If you knew me from looking at me / you would realize that I am [innocent] like the wolf of the mighty one of Egypt [i.e. Joseph, whose brothers claimed he had been killed by a wolf]. / I am Joseph’s wolf, oh lord, / make a wolfish peace with Joseph’s wolf!”). A “wolfish peace” is a peace concluded despite personal enmity. See *LN*, s.v. *gurg-āshī*. Darguzīnī responded: “gar z-ān ki tū tukhm-i kīna-yam kāšta-ī / dar jang naṣīb-i ṣulḥ bugdhāshta-ī / aknūn ki zamāna pāydar-ast marā / bī bahra bimāndī az gurg-āšta-ī” (“Because you have sown the seeds of rancour against me / you have missed the opportunity for peace when there was still a war. / Now that good fortune is mine / you remain without a share in peace!”).

²⁶³ See *EJ2*, s.v. *Ṣuʿlūk*, IX, 863b–868a (A. Arazi). Unfortunately, I have not been able to see Khalid ʿAthāmīna’s “Uqūbat al-nafy fī ṣadr al-Islām wa-l-dawla al-Umawiyya,” *al-Karmil* 5 (1984).

²⁶⁴ See the cases of banishment in *MA*, III, 185–212.

²⁶⁵ For a discussion of the topos of *ghurbat* (exile) in Persian poets of the Saljūq period, see Sharma, *Persian Poetry at the Indian Frontier*. For *ghurbat* in Arabic poetry, see Gustave E. von Grunebaum, *Kritik und Dichtkunst: Studien zur arabischen Literaturgeschichte* (Wiesbaden: Harrassowitz, 1955), 39. Cf. also studies of the genre of *al-ḥanīn ilā l-awṭān* (“love of one’s homeland”), for example Kathrin Müller, “*Al-Ḥanīn ilā l-Awṭān* in Early *Adab* Literature,” in Angelika Neuwirth, Birgit Embalo et al. (eds.), *Myths, Historical Archetypes and Symbolic Figures in Arabic Literature: Towards a New Hermeneutic Approach* (Stuttgart: Steiner, 1999), 33–58; Wadad al-Qadi, “Expressions of Alienation in Early Arabic Literature,” in Neuwirth, Embalo et al., *Myths*, 3–31. For a study of exile in Roman and Jewish antiquity, see Ernst Ludwig Grasmück, *Exilium: Untersuchungen zur Verbannung in der Antike* (Paderborn: Schöningh, 1978).

even a quick perusal of Saljūq sources will disprove Tyan's statement that banishment from the city (*nafy min al-balad*) "seems to have been practiced only in Spain."²⁶⁶

Traveling in the Saljūq period, whether coerced or not, was dangerous – the repeated praise for rulers or government officials who safeguarded the security of the highways indicate the dearth thereof. Bāṭinīs, brigands, and marauding Turkoman militaries threatened the safety of the roads. As for life in exile, Zamakhsharī wrote:

What is sadder? The black color of the raven, or your situation, exile [*gharīb*]? How could the situation of him who is far from his family not be sad? . . . No doubt exile would be a lesson [*durba*] if it were not a pain [*kurba*].²⁶⁷

A similar sentiment was expressed by the Persian poet Jabalī (d. 555/1160), who lamented that "even though he may live in the territory of Islam, the exile suffers terribly [*gharīb agar chi bi-dār al-islām g'rad jāy/buwad natīja-yi ghurbat hama 'adhāb-i alīm*]."²⁶⁸

While under the Ghaznavids viziers and other high officials are known to have been sent into exile,²⁶⁹ the first case in the Saljūq period is that of the vizier Kundurī (d. 455/1063), who was banished from Iṣfahān to Marv al-Rūdh by Niẓām al-Mulk, vizier of Alp Arslān.²⁷⁰ Abū Shujā' al-Rudhrāwarī, the vizier of caliph Muqtadī, was deposed in 484/1091 and ordered by Niẓām al-Mulk to leave Baghdad (*kataba bi-ikhrājīhi min Baghdād*). He returned to his hometown Rūdhrawar and then chose exile in Medina, living as a "neighbor [*mujāwir*]" at the grave of the Prophet, eventually dying there in 488/1095.²⁷¹ Perhaps the most famous *mujāwir* of Saljūq times is the Shāfi'ite theologian and jurist Juwaynī, the Imām al-Ḥaramayn (d. 478/1085).²⁷² Often a prolonged stay in

²⁶⁶ Tyan, *Histoire*, 650.

²⁶⁷ Zamakhsharī, *Aṭwāq al-dhahab*, 152–3. The black raven, a topos in classical Arabic poetry, indicates sadness.

²⁶⁸ *LN*, s.v. *ghurbat*.

²⁶⁹ The viziers Aḥmad b. Ḥasan al-Maymundī and Ḥasanak (before his execution) were banished to "a fortress in Hind" and to Herat. See Khwāndamīr, *Dastūr al-wuzarā'*, 140; Bayhaqī, *Tārīkh-i Bayhaqī*, 167. The *Tārīkh-i Sīstān* reports that Maḥmūd of Ghazna subdued in battle the rebellious *amīr* Khalaf, the governor of Sīstān. Maḥmūd then let Khalaf decide whether he desired to be banished. Khalaf was able to convince Maḥmūd to help him move his household. Maḥmūd gave fifty mules and camels for the *amīr*'s belongings to be carried to his chosen place of exile in Khurāsān. See anon., *Tārīkh-i Sīstān*, 287–8.

²⁷⁰ Bundārī, *Tārīkh dawlat āl Saljūq*, 30. A year later, two paid assassins killed Kundurī and brought his head back to Alp Arslān, who was in Kirmān at the time. See *EI2*, s.v. al-Kundurī, V, 387b–388b (G. Makdisi).

²⁷¹ Ibn al-Jawzī, *Muntazam*, XVII, 26; Ibn Ṭīqtaqā, *Fakhrī*, 219–20. Cf. *EI2*, s.v. al-Rudhrāwarī, VIII, 586b (C. E. Bosworth); Henri Laoust, *La politique de Ghazālī* (Paris: P. Geuthner, 1970), 56; Mez, *Renaissance*, 316. Another well-known case of banishment to Mecca is that of the vizier 'Alī b. 'Isā, who was exiled there after Ibn al-Furāt claimed the vizierate in 311/923–4. See *MA*, III, 197–8, quoting Tanūkhī, *Nishwār al-muḥāḍara*, IV, 70–73. Timur banished Abū l-Layth al-Samarqandī to Mecca. See *LN*, s.v. Abū l-Layth.

²⁷² Cf. *EI2*, s.v. al-Djuwaynī, Abū l-Ma'ālī 'Abd al-Malik, II, 605a (C. Brockelmann and L. Gardet).

Medina or Mecca was in fact a form of banishment, whence, it appears, the meaning of the Persian *mujāwir kardan* (“to banish,” lit. “to make into a *mujāwir*,” in addition to *nafy-i arḍ kardan*).²⁷³ In 497/1103–4, Sanjar’s vizier Abū l-Faṭḥ al-Ṭuḡhrā’ī was caught spinning an intrigue, trying to alienate the sulṭān from his general (*asfahsalār*) Bazghash. Sanjar arrested Ṭuḡhrā’ī and wanted to execute him. However, the *amīr* Bazghash convinced Sanjar to have mercy, reminding him that Ṭuḡhrā’ī had “the privilege of having served [*lahu ḥaqqu khidmatin*].” Sanjar contented himself with exiling the vizier to Ghazna.²⁷⁴ Another vizier of Sanjar, Yughānbak al-Kāshghārī, was exiled, after spending some time in prison, to Turkestan in 518/1124.²⁷⁵

While the politically influential were exiled to specific and often remote places, unruly commoners were simply expelled from the city. Poets were susceptible to such treatment, especially when they had incurred the ruler’s ire because of their sharp tongues and witty criticisms.²⁷⁶ The poet Ibn Muṅīr al-Ṭarābulusī (d. 548/1153) was banished from Damascus by the governor Būrī b. Ṭuḡhtikīn for slandering the city’s inhabitants.²⁷⁷ Some decades later, Ṣalāḥ al-Dīn al-Ayyūbī banished the poet Ibn ‘Unayn al-Anṣārī al-Dimashqī from Damascus because of a *qaṣīda* that he had composed in which he slandered the people of Damascus. “Banish also the muezzin of your city,” the poet complained in a letter, “if indeed everyone who speaks truthfully is to be banished.”²⁷⁸

Unruly scholars could also be expelled from the city. The case of Juwaynī has already been mentioned; Ghazālī chose exile for himself. Qushayrī, the Shāfi’ī jurist and Ash’arī theologian whose teaching caused sectarian strife

²⁷³ Jalal al-Din Ghaffari, *Dictionnaire Ghaffari Persan-Français* (Tehran: Imprimerie de l’Université, 1957), V, 806.

²⁷⁴ Ibn al-Athīr, *Kāmil*, VIII, 500.

²⁷⁵ Rāwandī, *Rāḥat al-suḍūr*, 167 n. 6; Charles Schefer, “Tableau du règne de Mouïzz Eddin Aboul Harith, Sultan Sindjar,” in Ernest Leroux, *Nouveaux mélanges orientaux* (Paris: Imprimerie Nationale, 1886), 14 n. 5; Agadshānow, *Der Staat der Seldschukiden*, 264. Khwāndamīr, *Dastūr al-wuzarā*, 188, says Kāshghārī (whom he calls Mujīr al-Mulk) was imprisoned, deprived of his property, and then sent to the court of Bahramshāh in Ghazna. Though less frequently than viziers, *amīrs*, if they managed to negotiate safe conduct (*amān*), could also be banished, such as when Sanjar ordered the treacherous *amīr* Kundughdī to leave Khurāsān (*amarahu bi-mufāraqati bilādīhi*) and settle in Ghazna. See Ibn al-Athīr, *Kāmil*, VIII, 478. The Rūm Saljūq Ghiyāth al-Dīn Kaykhusraw was exiled by his usurper brother Rukn al-Dīn: Ibn Bībī, *Saljūqnāma* (tr. Duda), 21. In return, upon claiming the throne after the death of Rukn al-Dīn, Ghiyāth al-Dīn exiled Rukn al-Dīn’s son ‘Izz al-Dīn Qilij Arslān to Tuqāt. See *ibid.*, 40.

²⁷⁶ Nāṣir-i Khusrāw and Sanā’ī eloquently lamented the suffering that the condition of *ghurbat* instilled in them. See Sharma, *Persian Poetry at the Indian Frontier*, 47–56. Others were not so lucky as to get away with mere banishment. Ja’farak, the court jester of sulṭān Malikshāh, had his tongue pulled out on the order of Jamāl al-Mulk, the son of the vizier Nizām al-Mulk. Ja’farak was known for mimicking and poking fun at Nizām al-Mulk in front of the sulṭān. See Mūnejjim Bashī, *Jamī’ al-duwal* (edited by S. A. Hasan, *Islamic Studies* 3, 4 [1964], 429–69).

²⁷⁷ Ibn Khallikān, *Wafayāt al-a’yān* (Beirut: Dār Ṣādir, 1398/[1977]), I, 156.

²⁷⁸ Ibn Khallikān, *Wafayāt al-a’yān*, V, 14.

(*fitna*) between the Ash‘arīs and the Ḥanbalīs at Baghdad in 469/1076–7, was first imprisoned and then banished back to Nishāpūr, his hometown.²⁷⁹ The Ḥanafī scholar Muḥammad b. Yahyā al-Zabīdī (d. 555/1160) was banished from Damascus around 506/1112 because he behaved like a *muḥtasib* in public, claiming authority to perform the religious duty of commanding right and forbidding wrong (*al-amr bi-l-ma‘rūf wa-l-nahy ‘an al-munkar*), much to the dislike of the local governor.²⁸⁰

Finally, sex offenders are mentioned in connection with the practice of expulsion. In the legal literature, this is in fact the only instance of banishment that is discussed at some length.²⁸¹ Shayzarī, the sixth-/twelfth-century Syrian author, enjoined the *muḥtasib* to reprimand female prostitutes and singers, and if they continued in their trade, to chastise (*ghazzarahā*) and banish them (*nafāhā min al-balad*). The same, Shayzarī held, must be done with effeminate men (*mukhannathūn*) and others who were known for their corrupt behavior (*fasād*) with other men, that is, sodomites.²⁸² While no reports about banishment of sodomites appear to exist from the Saljūq period, the *muḥtasib* of Baghdad expelled a number of female prostitutes (*mufsidāt*) from East Baghdad to the western shore in 467/1074–5.²⁸³

²⁷⁹ Ibn al-Jawzī, *Muntaẓam*, XVII, 190. See also the case of Abū l-Futūḥ al-Isfarā‘inī, an Ash‘arī theologian and preacher who provoked the Ḥanbalī population to riot and therefore was expelled from Baghdad in 538/1143–4. See Berkey, *Popular Preaching*, 59.

²⁸⁰ ‘Abd al-Qādir b. Muḥammad Ibn Abī l-Wafā’, *al-Jawāhir al-muḍīyya fī ṭabaqāt al-Ḥanafīyya*, II, 142.13, cited in Michael Cook, *Commanding Right and Forbidding Wrong*, 316.

²⁸¹ Peters, *Crime and Punishment*, 34: “As to illicit sex committed by a person who is not a *muḥṣan* . . . banishment for a year is a complementary punishment according to all Sunni schools except the Ḥanafites . . . In Shiite law, banishment is also an additional penalty for pimping [*qiyāda*].” For Shi‘ite views on *qiyāda*, see ‘Alī Husayn Munṭazirī, *K. al-ḥudūd fī mabāḥith al-zinā wa-l-liwāt wa-l-sahq wa-l-qiyāda* (Qum: Intishārāt-i Dār al-Fikr, n.d.), 188–213.

²⁸² Shayzarī, *Nihāyat al-rubā*, 110. Banishment of *mukhannathūn* is also prescribed in Ibn ‘Abdūn’s Andalusian *ḥisba* manual. See *EI2*, s.v. Liwāt, V, 776a–779b (C. Pellat and eds.). In Abū Dāwūd, *Sunan* (ed. ‘Abd al-Ḥamīd), IV, 282 (*adab* no. 4928), the prophet banishes a *mukhannath* to al-Naqī’, a place some three or four miles from Medina (Shihāb al-Dīn Abū ‘Abd Allāh Yāqūt al-Ḥamawī, *Mu‘jam al-Buldān* [Beirut: Dār Sādir, (1955–7)], V, 301–2). For similar traditions, see Bukhārī, *Ṣaḥīḥ*, VI, 2508; Ibn Hanbal, *Musnad*, I, 225 and passim. These *ḥadīths* are likely to have originated in response to the flourishing milieu of *mukhannathūn* singers in Medina in the first century of the Hijra. See Everett K. Rowson, “The Effeminate of Early Medina,” *JAOS* 111 (1991), 671–93. The term *mukhannath* originally appears to have signified an effeminate male singer, but later acquired the meaning of the passive partner in a homosexual union. The term *lūfī*, on the other hand, signifies the active homosexual partner, who was, at least from ‘Abbāsīd times, exposed to less intense societal disapproval than the passive partner. See *ibid.*, 685–6. In a *ḥadīth* in Bukhārī, *Ṣaḥīḥ*, VI, 2507, an unmarried adulterer is banished from Medina for one year. Cf. Mohammed el-Awa, *Punishment in Islamic Law: A Comparative Study* (Indianapolis: American Trust Publications, 1982), 19, who notes that the Ḥanafīs disagreed with this practice. It can be conjectured that the punishment for unmarried adulterers was conflated with that for sodomy (*liwāt*), which some jurists held to be analogous to fornication (*zinā*). Cf. ch. 5 of this study.

²⁸³ Ibn al-Jawzī, *Muntaẓam*, XVI, 166. Evidence for the existence of prostitution under the Saljūqs is provided by the comment in Rāwandī, *Rāḥat al-ṣudūr* (“Chapter on the injustice and tyranny that was current in Irāq in the times of the author”), that each *amīr* had opened brothels (*qawwād-khānas*) in each of the cities of Irāq.

Incomplete though it may be, with this the catalogue of punishments under the Saljūqs is brought to an end.²⁸⁴ I have proposed a basic taxonomy of punishment which differentiates between spheres, institutions, and types of punishment. This has served to create an overall picture of the practice of punishment as well as its political justification in Saljūq society. Salient features of the punitive state apparatus are the distinction into private, semi-private, and public punishment, the use of public punishment as a political tactic, the reliance on a system of overlapping jurisdictions, and the importance of punishments directed against honor. All in all, the repressive penal system set up by the political authorities was a social reality with far-reaching impact on ordinary people's life experience. With this in mind, we are now equipped for a change of perspective. It will now be easier to understand what writers critical of state punishment and its ideological underpinnings were up against. Before tackling legal views of punishment in the third part of this study, I turn, first, to notions of punishment in the next world. The general question I raise is in what ways other-worldly punishment was conceptually related to this-worldly punishment. More specifically, I propose to investigate whether the former could serve as an alternative to the latter.

²⁸⁴ For example, a fifth type of punishment is fining. From among the early and classical authorities, only the Ḥanafī Abū Yūsuf and the Mālikīs regarded fining as lawful, but jurists of the late classical and postclassical period increasingly welcomed the practice. See Peters, *Crime and Punishment*, 33.

PART II

The eschatology of punishment

The structure of hell

Sins and the uncertainty of salvation

This study seeks to investigate the ways in which certain strata of medieval Muslim society conceptualized and enacted punishments against members of their own faith community. According to this principle, as I turn to punishment as an aspect of life in the hereafter, I exclude the punishment of unbelievers (*kuffār*). If the *kuffār* are indeed the biggest group among the inhabitants of the Islamic hell, they are by no means the only group of people there. As I propose to show, traditions from the Prophet (*ḥadīths*) and popular expressions of Muslim eschatology in particular reckoned with a large number of Muslim denizens of hell, who were to suffer punishment in hell for a variety of reasons, and in a variety of ways.¹

Theologically speaking, the question of who among the members of the Muslim community enters hell hinges on the definition of what constitutes a major sin (*kabāra*, pl. *kabā'ir*, lit. “big thing,” Lat. *peccatum mortale*; cf. the Italian *farla grossa*). According to the consensus of medieval scholars, only Muslims who commit major, or grave, sins (*ahl al-kabā'ir*) are to suffer a sojourn in hell. Granted, there is always the possibility of repentance (*tawba*). It is promised that those among the grave sinners who repent (*tāba*), and are forgiven for, their (major) sins before they die will enter paradise with no further ado, and will dwell there everlastingly.²

¹ This is also noted by Vuckovic, *Heavenly Journeys, Earthly Concerns*, 113, in the context of stories about the Prophet’s legendary night journey (*isrā*). In the following, I use the term “eschatology” as referring to representations of the afterlife, i.e., of heaven and hell, and not exclusively to the apocalyptic events at the end of time. According to the most current definitions, the term includes both aspects. See *The HarperCollins Dictionary of Religion*, edited by Jonathan Z. Smith et al. (San Francisco: HarperCollins, 1995), s.v. “Eschatology,” 342; Marilyn Robinson Waldman, “Islamic Eschatology,” in Eliade, *Encyclopedia of Religion*, V, 152a–156a.

² Abū Muḥammad ‘Alī b. Aḥmad Ibn Ḥazm, *al-Radd ‘alā Ibn al-Naḡrīla* (Cairo: Maktabat Dār al-‘Urūba, 1960), 148. This was also the position of the Mu’tazilites. See Goldziher, *Richtungen der islamischen Koranauslegung*, 168. An important caveat is that Qur’ān 4:18 and passim (for parallels, see Paret, *Kommentar*, 92) affirm that *tawba* is void if it takes place at the moment right before death, as was the case with Pharaoh (Qur’ān 10:90). However, at least as far as

However, what about grave sinners who die without repenting in time? The Mu'tazilites, taking at face value the divine promise of salvation and threat of punishment (*al-wa'd wa-l-wa'd*), held that such people were condemned to eternal hellfire.³ The majority of Sunnī theologians thought this too harsh, and in consequence sought to mitigate the salvation prospects of the grave sinners.⁴ The Saljūq contemporary Pazdawī (d. 493/1100) stated that even those grave sinners who had not repented before death could be forgiven by God and taken into paradise immediately; they could also be punished in hell "as long as He pleases"; but in no case would they dwell in hell everlastingly (*lā yukhliduhum fī l-nār al-batta*).⁵ Other considerations that are apt to lessen eschatological fears include, notably, the Prophet's power to intercede on behalf of the grave sinners (his *shafā'a*).⁶ In a striking passage, Ibn Ḥazm (d. 456/1064) summed up what he thought was the consensus of the community (*ijmā' al-umma*) regarding the eschatological destiny of the sinner:

Whosoever commits major sins – in as much as God wills it – and then dies, while persisting in them, if his good actions and his bad actions are equivalent in such a way that no bad action tips the balance, such a person will be forgiven and not punished for his actions . . . God counts bad actions once and good actions ten times . . . God has willed that retribution will begin with the punishment of [only] those whose misdeeds [*khaṭi'ā*] are manyfold, and whose badness weighs heavier than their goodness.⁷

As Ibn Ḥazm implies, major sins not only become void as the result of repentance before death, but they lose their damnatory impact if they are outweighed by good actions, which are each worth ten times as much as a

Muslim sinners were concerned, the verse was usually interpreted less rigidly. See van Ess, *Theologie und Gesellschaft im 2. und 3. Jahrhundert Hidschra: eine Geschichte des religiösen Denkens im frühen Islam* (Berlin: de Gruyter, 1991–7), IV, 581. For example, Abū Ṭālib Muḥammad b. 'Alī al-Ḥārithī al-Makkī, *Qūt al-qulūb fī mu'āmalat al-maḥbūb* (translated by Richard Gramlich; Stuttgart: Franz Steiner, 1992–5), III, 222, states that repentance is possible until the moment when the soul, departing from the body, reaches one's throat and one starts to see the angels.

³ See the creed of Zamakhsharī in Sabine Schmidtke, *A Mu'tazilite Creed of al-Zamakhshari (d. 538/1144)* (Wiesbaden: Harassowitz, 1997), 76, predicting eternal punishment for the grave sinner.

⁴ See van Ess, *Theologie und Gesellschaft*, IV, 547; Louis Gardet, *Dieu et la destinée de l'homme* (Paris: J. Vrin, 1967), 303.

⁵ Muḥammad b. Muḥammad al-Pazdawī, *Uṣūl al-dīn* (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyya, 1963), 131. Cf. the creeds of Ghazālī and the Mātūrīdī Nasafī in W. Montgomery Watt, *Islamic Creeds* (Edinburgh: Edinburgh University Press, 1994), 78, 82.

⁶ See the *ḥadīth* in Ibn Ḥanbal, *Musnad*, III, 213: "shafā'atī li-ahl al-kabā'ir min ummatī." The Saljūq contemporary Pazdawī, *Uṣūl al-dīn*, 135:5, speaks only of the "intercession of an interceder" (*shafā'at shafī'*). While the credal statements collected by Watt, *Islamic Creeds*, 44 (Ash'arī), 50 (Ṭaḥāwī) and passim, specify only the Prophet's intercession, in the eschatological *ḥadīth*, saints and 'ulamā' are likewise mentioned. See Qurtubī, *Tadhkira*, 297. On the issue of *shafā'a*, see further Jane Idleman Smith and Yvonne Yazbak Haddad, *The Islamic Understanding of Death and Resurrection* (Albany: SUNY Press, 1981), 23; van Ess, *Theologie und Gesellschaft*, IV, 545–9.

⁷ Ibn Ḥazm, *al-Radd 'alā Ibn Naghārā*, 149.

major sin. This position of almost limitless *Heilsgewissheit* (certainty of salvation) could be supported by a number of well-known *ḥadīths*: “Whosoever has faith in his heart the weight of a dust particle will be brought out of hellfire”,⁸ or “No one shall enter hell [that is, not even temporarily] who has an atom of faith in his heart.”⁹ In a similar vein, credal statements such as those collected by Watt appear less interested in listing the details of what constituted major sins and more concerned with establishing firmly the principle that faith (*īmān*) was, eventually, a sure way to salvation, and that only the unbelievers would suffer in hell.¹⁰ In sum, most theological schools stated that faith, however one was to define it,¹¹ in the end would ensure salvation. Thus, Goldziher could state that the position of Islamic “orthodoxy” on this point is “pure optimism” (“der reine Optimismus”).¹²

However, things were viewed less optimistically too.¹³ For example, the idea embraced by Ibn Ḥazm that good actions could atone for major sins (a mechanism that the Mu‘tazilites called *iḥbāt*, lit. “to quieten down”) was, as van Ess points out, not as much of a consensus view as Ibn Ḥazm thought.¹⁴ If in addition one takes into account psychological factors, it is questionable whether the ordinary man’s fear of punishment in the hereafter could always be done away with by simple assertion of faith. After all, even temporary punishment in hell must have seemed a formidable prospect.¹⁵ At any rate, discussions of which transgressions actually constituted major sins (and thus a ticket to hell) remained an important preoccupation of scholars and common people alike.

⁸ Muslim, *Ṣaḥīḥ*, I, 172, 183; Tirmidhī, *Sunan*, IV, 361.

⁹ Muslim, *Ṣaḥīḥ*, I, 93.

¹⁰ Watt, *Islamic Creeds*, 77 (Ghazālī) and passim. Add to this the credal statement of Ibn Ḥazm in his *Marātib al-ijmā‘* (Beirut: Dār Ibn Ḥazm, 1998), 267.

¹¹ For a summary of the various definitions given by early Muslim theologians of the concept of *īmān*, see van Ess, *Theologie und Gesellschaft*, IV, 563–78; Gardet, *Dieu et la destinée de l’homme*, 353–68. For my purposes in the present discussion, however, the focus is on the concept of sin, not of faith.

¹² Goldziher, *Richtungen der islamischen Koranauslegung*, 160.

¹³ For a classical presentation of Mu‘tazilī pessimism regarding people’s fate in the hereafter (their “pessimistische Jenseitsanschauung”), see Goldziher, *Richtungen der islamischen Koranauslegung*, 155–69.

¹⁴ Van Ess, *Theologie und Gesellschaft*, IV, 589. Cf. Qur’ān 4:31: “If you avoid the grave sins that are forbidden to you, We will abrogate your evil actions.” The verse implies that unrepented sins can be forgiven *except* the major sins. This was the position of the followers of the Mu‘tazilite Jubbā‘ī. See Daniel Gimaret, *La doctrine d’al-Ash‘arī* (Paris: Cerf, 1990), 489. Makkī, *Qūt al-qulūb* (tr. Gramlich), III, 213, 218, argues that all people who avoid the major sins will be forgiven for their small sins. Such views were rejected by Ash‘arī who argued that God may or may not forgive sins (whether great or small) as He pleases, except the sin of unbelief. See Gimaret, *La doctrine d’al-Ash‘arī*, 489–90.

¹⁵ Fear of temporary punishment in hell must have been especially great for the Ḥanafī-Māturīdīs who held, against the Ash‘arīs, that Muslim sinners were definitely punished for some time in hell, individual exceptions remaining, however, possible. See Gardet, *Dieu et la destinée de l’homme*, 304.

Lists of grave sins in the ḥadīth tradition

What, then, are the major sins? The Qur'ān is not of much help in clarifying the issue. While distinguishing between the two categories of minor sins (*ṣaghā'ir*) and major sins (*kabā'ir*),¹⁶ it does not provide a homogeneous picture of what these two categories actually signify.¹⁷ *Ḥadīths* stepped in to fill the vacuum. In the canonical *ḥadīth* collections, a view of the issue of major sins was formulated which one could characterize as a “middle position” between certainty of salvation and fear of punishment in the hereafter. Traditions counting three major sins (polytheism, killing of infants, fornication)¹⁸ and others counting four major sins (polytheism, impiety vis-à-vis one's parents, homicide, perjury)¹⁹ appear to have been conflated into traditions speaking of seven major sins,²⁰ or into traditions introduced by the common formula of “avoid the seven abominations [*ijtanibū al-saba' al-mūbiqāt*].”²¹ Contents differ slightly, but nevertheless one can glean a core group of major sins from these and similar traditions. This group is constituted by the sins of polytheism (*shirk*), murder (*qatl*),²² fornication (*zinā*), disrespect toward one's parents (*'uqūq al-wāliḍayn*), perjury (*shahādat al-zūr*), slander (*qadhf*), usury (*ribā*), the practice of sorcery (*sihr*), apostasy (*irtidād*), desecration of the Holy Mosque in Mecca (*illḥād fī masjīd al-ḥaram*), flight from the battlefield (*ṭawallā min al-zahf*), and usurpation of the inheritance of orphans (*akl māl al-ya'tīm*). However, a definitive list is difficult, if not impossible, to come up with.²³ Next to the above-mentioned sins, which all involve externally observable actions in the *forum externum*, from early on wrong credal commitments – that is, offenses committed in

¹⁶ See Qur'ān 4:31, 42:37, 53:32 (for the *kabā'ir*); 18:49 (*kabīra wa-ṣaghīra*). Other terms for “sin” in the Qur'ān include *dhanb* (pl. *dhunūb*; e.g., 3:11, 16, 193; 8:54; 12:29); *fāḥisha* (pl. *fawāḥish*; e.g., 2:169; 4:22; 12:24); *ḥaraj* (e.g., 9:91; 48:17); *ithm* (e.g., 2:173, 181–2, 219); *junāḥ* (e.g., 2:198, 235; 4:102); *jurm* (e.g., 6:147); *khaḍ'ra* (e.g., 2:81); *lamam* (e.g., 53:32); *ma'siya* (e.g., 58: 8–9); and *sayy'ra* (e.g., 3:193).

¹⁷ *EQ*, s.v. Sin, Major and Minor, V, 19a (M. Q. Zaman).

¹⁸ Muslim, *Ṣaḥīḥ*, I, 92; Ibn al-Jawzī, *Zād al-masīr fī 'ilm al-tafsīr* ([Damascus]: al-Maktab al-Islāmī, 1964–8), II, 62–3.

¹⁹ Bukhārī, *Ṣaḥīḥ*, II, 939, VI, 2457; Muslim, *Ṣaḥīḥ*, I, 92; Nasā'ī, *al-Sunan al-kubrā*, II, 289, III, 492, VI, 322; Tirmidhī, *Sunan*, III, 513, V, 235; Bayhaqī, *al-Sunan al-kubrā*, VIII, 20, X, 121; Ibn Ḥanbal, *Musnad*, II, 201, III, 134.

²⁰ Bayhaqī, *al-Sunan al-kubrā*, X, 187; Nasā'ī, *Sunan*, V, 8. Abū Bakr 'Abd al-Razzāq b. Humām al-Ṣan'ānī, *Muṣannaf* (Beirut: al-Maktab al-Islāmī, 1970–2), X, 460, relates a tradition from al-Ḥasan (al-Baṣrī) that enumerates eight sins: polytheism, disrespect toward one's parents, homicide, usury, false accusation of fornication, usurpation of the inheritance of orphans, false oath, and flight from the battlefield.

²¹ Bukhārī, *Ṣaḥīḥ*, III, 1017, VI, 2515; Muslim, *Ṣaḥīḥ*, I, 92; Abū Dāwūd, *Sunan*, III, 115; Nasā'ī, *Sunan*, IV, 114, VI, 418; Bayhaqī, *al-Sunan al-kubrā*, VI, 284, VIII, 20, 249. The term *mūbiqa* (“that which leads to perdition”) was eventually replaced by *kabīra*. See van Ess, *Theologie und Gesellschaft*, IV, 584.

²² This includes suicide (*qatl al-nafs*). That suicide became a *kabīra* early on is shown by Franz Rosenthal, “On Suicide in Islam,” *JAOS* 66 (1946), 239–59, esp. 243.

²³ See R. Stehly, “Un problème de théologie musulmane: la définition des fautes graves (*kabā'ir*),” *Revue des Études Islamiques* 45 (1977), 171.

the *forum internum* – were counted among the grave sins. ‘Abd al-Razzāq al-Ṣan‘ānī (d. 211/827) relates from the Companion Ibn Mas‘ūd (d. 32/652–3) a list of major sins that includes despair of God’s help (*al-iyās min rawḥ Allāh*) and giving up on God’s mercy (*al-qunūt min raḥmat Allāh*), as well as thinking oneself safe from trials sent by God (*al-ammn min makr Allāh*).²⁴

Thus, considerable ambiguity appears to have been the main characteristic of any list of major sins from early on. The problematic nature of such an undefined state of things did not go unnoticed by more cautious minds. Abū Ṭālib al-Makkī (d. 386/996) tried to fix the number at seventeen.²⁵ Others, however, chose to follow the example set by Ibn ‘Abbās (d. 68/687), who was credited with holding that the major sins were closer to seven hundred than to seventy.²⁶ Al-Ḥakīm al-Tirmidhī (fl. late third/ninth c.) already had counted more than 115 “things forbidden by the Prophet” (*manhiyāt*).²⁷ Shams al-Dīn al-Dhahabī (d. 748/1348), in what is perhaps the best-known work on the topic, attempted to limit the number of grave sins to seventy.²⁸ However, dissatisfied with Dhahabī’s work, Aḥmad b. Muḥammad Ibn Ḥajar al-Haythamī (d. 974/1567) wrote a list of 467 grave sins.²⁹ No doubt the long lists of major sins such as the ones written up by Tirmidhī and Haythamī worked as a potent reminder of punishment in the hereafter, and thus speak a language different from the optimistic affirmation of salvation in the creeds and systematic treatises of the *mutakallimūn*.³⁰

Popular expressions of the uncertainty of salvation

The flourishing of traditions dealing with major sins may have come about in connection with a third type of literature: the myriad reports about punishment

²⁴ Ṣan‘ānī, *Muṣannaf*, X, 459; Ṭabarī, *Jāmi‘ al-bayān ‘an ta’wīl āy al-Qur’an* (Cairo: al-Matba‘a al-Maymaniyya, 1321/1903), V, 29. “Despair of God’s help” is the sixty-ninth grave sin in Shams al-Dīn Abū ‘Abd Allāh Muḥammad b. Aḥmad al-Dhahabī’s *al-Kabā’ir* (Beirut: al-Maktaba al-Umawiyya, 1389/1970), referring to Qur’an 12:87. “Thinking oneself safe from trials sent by God (or from God’s guile, *makr*)” appears as the sixty-eighth grave sin, referring to Qur’an 7:99.

²⁵ Makkī, *Qūt al-qulūb* (tr. Gramlich), III, 215–24. However, Makkī does not hesitate to cite *ḥadīths* that go beyond the list of seventeen that he himself has presented, such as “every sin perpetrated intentionally is a major sin.” See *ibid.*, III, 217. Cf. E. E. Elder, “The Development of the Muslim Doctrine of Sins and Their Forgiveness,” *Moslem World* 29, 2 (1939), 181.

²⁶ Ṣan‘ānī, *Muṣannaf*, X, 460; Ṭabarī, *Jāmi‘ al-bayān* (ed. 1903), V, 26, and Qur’an 4:31.

²⁷ Al-Ḥakīm al-Tirmidhī, *al-Manhiyāt* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1406/1986).

²⁸ Dhahabī, *al-Kabā’ir* (ed. Damascus), 8.

²⁹ Aḥmad b. Muḥammad b. ‘Alī Ibn Ḥajar al-Haythamī, *al-Zawājir ‘an iqtirāf al-kabā’ir* (Beirut: Dār al-Ma‘rifā, 1998–). See *EQ*, s.v. Sin, Major and Minor, V, 20a (M. Q. Zaman). For a short discussion of the *kabā’ir*, see Zayn al-Dīn b. Ibrāhīm Ibn Nujaym’s *Sharḥ risālat al-saghā’ir wa-l-kabā’ir* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1401/1981).

³⁰ I have not been able to study in any depth Shī‘ī traditions about grave sins. Roy Mottahedeh has drawn my attention to Ja‘far b. Aḥmad Ibn al-Rāzī al-Qummi’s *Jāmi‘ al-aḥādīth* (Mashhad: Majma‘ al-Buḥūth al-Islāmiyya, 1993), which features a chapter entitled “On actions that preclude one from entering Paradise [K. al-*A‘māl al-mān‘a min dukhūl al-janna*].” These include, *inter alia*, killing a *dhimmi* and collecting taxes. See *ibid.*, 63.

in hell, as can be found in eschatological *ḥadīths* in general, and, more specifically, in accounts of Muḥammad's legendary night journey (*isrāʾ*) to heaven and to hell. Descriptions of the Muslim hell offer clear, albeit indirect, definitions of major sins, for those Muslims shown to be in hellfire must be counted among the grave sinners *qua definitionem*. However, traditions about the Muslim hell have, to my knowledge, not yet been analyzed in any discussion of the issue.³¹

These traditions, I suggest, were addressed to a general, or popular, audience.³² The *ḥadīth* in general lent itself well as a vehicle to reach the masses.³³ We know that in Saljūq and pre-Saljūq times, public *ḥadīth* sessions could attract considerable numbers of people. In the course of these sessions, an assistant called the *mustamlī* (lit. "he who is told to dictate") would repeat the *ḥadīths* to those seated too far from the transmitter to hear him. The historical sources relate that people filled the courtyards of mosques because a certain traditionist had come to teach *ḥadīths*, and *mustamlīs* rode around on mules to pass the word on to thousands or even multiple thousands of listeners.³⁴ While such reports must be taken with a grain of salt,³⁵ there can be little doubt that telling *ḥadīths* with the use of *mustamlīs* was an existing practice. It is known, for example, that Ibn Ḥibbān (d. 354/965), a popular teacher in Nīshābūr and the transmitter of a long *isrāʾ* story, held public lectures on *ḥadīths* with the help of *mustamlīs*.³⁶

³¹ See, for example, *EQ*, s.v. Sin, Major and Minor, V, 19a–28a (M. Q. Zaman).

³² Here I follow an idea expressed by James Bellamy, who has stated that the cultivation of Prophetic *ḥadīths* "was, in fact, the most popular literary activity exercised by Muslims for a period of about two centuries. Literally thousands of people were engaged in it . . . In later times we know from the reading certificates on extant manuscripts that reading sessions were often attended by scores of people." Bellamy concludes that the *ahl al-ḥadīth* movement "in both its religious and literary aspects . . . gave to Islam its religious and its moral tone." See his "Sex and Society in Islamic Popular Literature," in Afaf Lutfi al-Sayyid-Marsot (ed.), *Society and the Sexes in Medieval Islam* (Malibu: Undena Publications, 1979), 25–6. Publicly narrating *ḥadīths* in the markets to make money was one of the activities of the Banū Sāsān. See the *Qaṣīda sāṣāniyya* by Abū Dulaf (Būyid period), translated by C. E. Bosworth in *The Medieval Islamic Underworld*, II, 200, verse 65.

³³ For an analysis of the formative role of public storytellers (*quṣṣāṣ*) played in the genesis of the *ḥadīth* tradition, see Gregor Schoeler, *Charakter und Authentie der muslimischen Überlieferung über das Leben Mohammeds* (Berlin: de Gruyter, 1996), esp. 90, 109, 116. For the role of the *quṣṣāṣ* in the formation of the *mīrāj*, see Richard Hartmann, *Die Himmelsreise Mohammeds und ihre Bedeutung in der Religion des Islam* (Leipzig: Teubner, 1930), 46–7.

³⁴ Ibn al-Jawzī, *Muntaẓam*, XI, 68–9 (in the time of caliph al-Mu'taṣim, r. 218/833–227/842). The *mustamlī* is Hārūn b. Sufyān (d. 253/867): Dhahabī, *Tārīkh al-Islām*, XIX, 359. See also the reports about the thousands of people attending the *ḥadīth* sessions of the great traditionist Bukhārī cited by Bellamy, "Sex and Society in Islamic Popular Literature," 25.

³⁵ See *EI2*, s.v. Mustamlī, VII, 725b (G. H. A. Juynboll), where it is noted that "[a]ccounts of mass meetings [around *ḥadīth* transmitters] . . . are found all over the sources, but have met with little credulity on the part of Western historians."

³⁶ We know of one of Ibn Ḥibbān's *mustamlīs*, Ibn al-Bayyī' (d. 405/1014). Al-Khaṭīb al-Baghādādī recommended Ibn Ḥibbān's books for study, and his *al-Musnad al-ṣaḥīḥ 'alā l-taqāsīm wa-l-anwā'* was still studied in the nineteenth century. See *EI2*, s.v. Ibn Ḥibbān, III, 799a–b (J. W. Fück). Ibn Ḥibbān's *isrāʾ* account is preserved in Jalāl al-Dīn 'Abd al-Rahmān b. al-Kamāl al-Suyūṭī, *al-La'ālī al-maṣnū'a fī l-aḥādīth al-maṣnū'a* (Beirut: Dār al-Kutub al-'Ilmiyya, 1417/1996), I, 62–74.

Another vehicle for descriptions of hell and its punishments were sermons.³⁷ Ibn al-Jawzī, the late Saljūq traditionist and famous preacher, recommended that sermons should have one major purpose, namely, to arouse fear in the audience.³⁸ No doubt reports about the punishment of sinners in hell, as witnessed during the Prophet's night journey, were especially apt to impress the masses that are known to have attended the sermons of Ibn al-Jawzī and other popular preachers. *Isrā'* stories are often characterized by a carefully crafted dramatic structure; therefore it is likely that they were meant to entertain broader audiences and that they circulated widely. In his Qur'ān commentary, Tha'labī (d. 427/1035) introduces his version of the Prophet's night journey by assuring the reader that he has limited himself to those traditions that are traceable and well known (*al-akhbār al-ma'thūra al-manshūra*). He then goes on to say that "I have collected them into one narrative [*nasaq wāḥid*] so that it may be easier to listen [*al'la l-istimā'*] and to benefit [*adnā al-intifā'*]."³⁹ Obviously, Tha'labī was concerned to make his narrative suitable for oral performance before a wider audience.

As Jonathan Berkey has noted in the context of Saljūq Baghdad, "preaching could, under certain circumstances, have profound social and political ramifications, and so the practice was inevitably of some interest to those who ruled."⁴⁰ Some popular preachers, such as the caliph Muqtafī's intimate Abū Maṣṣūr al-Muẓaffar (d. 547/1152), were known for their close relationships with rulers, in whose interests they could work.⁴¹ However, as Berkey points out, "[o]ther preachers . . . derived their reputations directly from their oppositional stand, from setting themselves against those in positions of power."⁴² Given the lack of a hierarchical organization of the Muslim religious élite, itinerant preachers such as the celebrated al-Sayyid 'Alī b. Ya'qūb (d. 527/1133), who traveled from Khurāsān through Persia and Iraq, finally

³⁷ Illustrative in this respect is the sermon given in the year 520 by caliph Mustarshid (r. 512/1118–529/1135), reported in Ibn al-Jawzī, *Muntaẓam*, XVII, 234. Cf. the sermon by Ibn Nubāta (d. 374/984) translated in part by Mez, *Renaissance*, 321.

³⁸ See Leder, *Ibn al-Ġawzī*, 5.

³⁹ Abū Ishāq Aḥmad b. Muḥammad b. Ibrāhīm al-Nisābūrī al-Tha'labī, *al-Kashf wa-l-bayān 'an tafsīr al-Qur'ān* (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1422/2002), VI, 55. According to Andrew Rippin, Tha'labī's famous collection of "Legends of the Prophets" (*Qiṣaṣ al-anbiyā'*) is "a work of popular imagination designed for education and entertainment" that "gives a taste of the character of his *tafsīr*." Tha'labī, however, was often deemed untrustworthy because in his *Qiṣaṣ* he related material from people such as Muqātil b. Sulaymān and Muḥammad b. al-Sā'ib al-Kalbī. See *EI2*, s.v. al-Tha'labī, Aḥmad b. Muḥammad, X, 434a (A. Rippin, written before the publication of Tha'labī's *tafsīr*). On Tha'labī's *tafsīr*, see the study by Walid A. Saleh, *The Formation of the Classical Tafsīr Tradition: The Qur'ān Commentary of al-Tha'labī (d. 427/1035)* (Leiden: Brill, 2004).

⁴⁰ Berkey, *Popular Preaching*, 59.

⁴¹ George Makdisi has pointed out the importance of popular preaching in the politically motivated propagation of a more articulately defined Sunnism in fifth-/eleventh-century Baghdad. See his *Ibn 'Aqīl et la résurgence de l'Islam traditionaliste au XIe siècle (Ve siècle de l'Hégire)* (Damascus: Institut Français de Damas, 1963), esp. 340–75.

⁴² Berkey, *Popular Preaching*, 60.

arriving at Baghdad, were extremely difficult for the authorities to control.⁴³ At any rate, there are enough reports to warrant the thought that popular preachers in Saljūq times were more than just the mouthpieces of those in positions of power, used by the latter to instill a false consciousness in the masses.⁴⁴ It would be hasty, therefore, to assume that dramatic narratives about the punishments of hell served only to tranquilize popular audiences with promises of future justice.

In this context one should be careful when using the term *popular*. The distinction between “high” and “low” religion that this concept implies is problematic since it tends to marginalize certain religious practices and to brand them as inauthentic, a move whose ideological assumptions must be questioned.⁴⁵ Furthermore, the popular/élite dichotomy often simply misses the point: in Islam, also the educated representatives of the “great tradition” (for example, speculative theologians) embraced elements characteristic of the “little tradition” (such as graphic accounts of the hereafter), and this with no apparent sense of contradiction. Ghazālī, for example, was capable of indulging in an array of – sometimes shockingly graphic – eschatological *ḥadīths*, no doubt apt to inspire fear of divine punishment, as well as in formulating abstract statements that seem to speak the language of salvation certainty.⁴⁶ Consequently, I use the term *popular* with some caution, and in the sense of addressing a general audience which could include members of the educated élite.⁴⁷

In the Islamic imagery of the hereafter a wide array of people appears among the denizens of hell. For example, in a version of Muḥammad’s journey into the heavens and into hell in Ṭabarī’s Qur’ān commentary, Muḥammad is reported to have overheard a conversation between Jahannam, the beast of

⁴³ *Ibid.*, 63, quoting Ṣalāh al-Dīn Khalīl b. Aybak al-Ṣafādī, *al-Wāfi bi-l-wafayyāt*, XXII, 333–4. Cf. the stories about wandering trickster preachers and their sermons, full of eschatological material, in Ḥarūrī, *Maqāmāt* (tr. Preston), 71–92 (the *maqāma* of Ṣan’ā), 289–310 (the *maqāma* of Rayy).

⁴⁴ For the question of the social and political context of preaching, see Berkey, *Popular Preaching*, 53–69. Berkey concludes his discussion by stating that popular preaching, especially eschatological preaching, “must surely in many instances have acted as a kind of social safety valve, deflecting and deflating the various pressures experienced by those medieval Musim and women who listened to the preachers and storytellers” (p. 68). While I agree with Berkey on the whole, below I attempt to describe these mechanisms of deflection and deflation in more detail.

⁴⁵ Peter Brown, *The Cult of the Saints: Its Rise and Its Function in Latin Christianity* (Chicago: University of Chicago Press, 1981), 13–22; Ahmet Karamustafa, *God’s Unruly Friends: Dervish Groups in the Islamic Later Middle Period, 1200–1500* (Salt Lake City: University of Utah Press, 1994), 4–11. See also the discussion in Berkey, *Popular Preaching*, 9–12. For a summary analysis of the popular/élite dichotomy in cultural studies and its shortcomings, see Tomoko Masuzawa, “Culture,” in Marc C. Taylor (ed.), *Critical Terms for Religious Studies* (Chicago: University of Chicago Press, 1998), 70–93, esp. 88–9.

⁴⁶ Compare Ghazālī’s creed in Watt, *Islamic Creeds*, 77, to his *al-Durra al-fākhira*, 98–9.

⁴⁷ However, I hold fast to the notion that one can meaningfully speak of a medieval Islamic “popular” cultural stratum; see the introduction. See also the illuminating discussion in Berkey, *Popular Preaching*, 9–12.

hell, and God. “O Lord!” says Jahannam, “Give me that which You have promised me, for I have a lot of chains . . . and my abyss is mighty deep, and my heat is mighty intense.” God calls back: “For you are the polytheists and unbelievers, men and women, and every wicked person [*khabīth*], proud oppressor and all those who do not believe in the Day of Judgment!” Jahannam concludes the eerie little dialogue with the remark, “I am satisfied!”⁴⁸ According to a similar story in Ghazālī’s eschatological manual *al-Durra al-fākhira* (“The Precious Pearl”), on the Day of Judgment, God calls out to Adam to pull out from among his progeny those who are consigned to the Fire. “How many, O Lord?” asks Adam. “Of every thousand, nine hundred and ninety go to the Fire,” comes the terrifying answer.⁴⁹ This is some light-years away from Ibn Ḥazm’s optimistic statement of salvation certainty and trust in God’s mercy. It is in fact an extreme manifestation of *Heilungewissheit*, written in an entirely different register of confidence than the optimistic promise that “whoever has faith [*īmān*] in his heart will not enter hell.”⁵⁰ One cannot but wonder at how such diametrically opposed notions could coexist. “Whoever has pride [*kibriyā*] in his heart the weight of a dust particle will not enter paradise” is another well-known tradition.⁵¹ Every lewd man of bad character (*al-shanẓūr al-fahḥāsh*),⁵² or simply every evil-doer (*fāḥish*),⁵³ is threatened with hell. These are broad categories indeed.

Some examples will suffice to show that these categories could be filled with all sorts of seemingly minor offenders. In eschatological *ḥadīths*, the proud and haughty (*al-mutakabbirūn*) keep company in hell with those who betray their oaths and promises of safety,⁵⁴ with those who die without paying their debts, with those who pay no attention when they come in contact with urine and then pray without ritually cleaning themselves, and with those who use obscene language against others.⁵⁵ ‘Abd al-Raḥīm al-Qādī, the late Saljūq

⁴⁸ Tha’labī, *Tafsīr*, VI, 58.

⁴⁹ Ghazālī, *al-Durra al-fākhira*, 79. Ghazālī’s authorship of this work is disputed, but the eschatological imagination at work in the fortieth chapter of the *Iḥyā’ ‘ulūm al-dīn* is no less elaborate than in *al-Durra al-fākhira*.

⁵⁰ Tirmidhī, *Sunan*, IV, 360.

⁵¹ Muslim, *Ṣaḥīḥ*, I, 93; Ibn ‘Asākir, *Madḥ al-tawādu’ wa-dhamm al-kibr* (Damascus: Dār al-Sanābil, 1413/1993), 25. Cf. other variants of the *lā yadkḥulu l-janna* type: “Four groups of people will not enter the Garden: those who are addicted to drinking, those who take interest, those who steal from orphans, and those who revolt against their parents.” See Abū ‘Abd Allāh Muḥammad b. ‘Abd Allāh al-Ḥākim al-Nisābūrī, *al-Mustadrak ‘alā l-ṣaḥīḥayn* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1411/1990), II, 43; IV, 163; Abū Ḥatīm Muḥammad Ibn Ḥibbān, *Ṣaḥīḥ* (Beirut: Mu’assasat al-Risāla, 1414/1993), XII, 166; Abū ‘Abd Allāh Muḥammad b. Yazīd Ibn Māja al-Qazwīnī, *Sunan* (Beirut: Dār al-Fikr, n.d.), II, 1120 (for the wine-drinker only); Abū Bakr ‘Abd Allāh b. Muḥammad Ibn Abī Shayba, *Muṣannaf* (Riyadh: Maktabat al-Rushd, 1409/1988–9), V, 98.

⁵² Qurṭubī, *Tadhkira*, 435.

⁵³ Shīrwayh b. Shahrḍār al-Daylamī, *Firdaws al-akḥbār bi-ma’tḥūr al-kḥiṭāb* (Beirut: Dār al-Kitāb al-‘Arabī, 1407/1987), II, 186.

⁵⁴ Qurṭubī, *Tadhkira*, 496. ⁵⁵ *Ibid.*, 497.

author of an eschatological manual,⁵⁶ includes among the damned “those who speak of worldly matters in the mosques,”⁵⁷ a common concern of the pious and a nuisance the interdiction of which was commonly delegated to the market-inspector, the *muḥtasib*.⁵⁸

Further heightening the fear of divine punishment was the fact that, in the eschatological literature, Muslim sinners are not restricted to a sojourn in the first layer of hell, which was commonly believed to be the place, nearest to paradise, where temporary punishment was meted out. There are numerous traditions that assign different classes of sinning believers to the different layers (or “gates,” *abwāb*) of hell, not just to the upper one. Thus, according to a tradition from Anas b. Mālik, a different “gate” is assigned to each of those who complain against God, those who are forgetful of God, those who think their worldly desires (*shahawāt*) more important than God, those who angrily blame God, and those who seek their fortune in something other than God, among others.⁵⁹ Another tradition lists seven types of mischievous scholars, assigning each type to a layer in hell.⁶⁰

Ibn al-Jawzī cites a tradition from Ibn ‘Abbās according to which a major sin is “everything for which God has prescribed the Fire in the hereafter [*kullu mā awjaba llāhu al-nār fī l-ākhirā*].”⁶¹ The statement appears to reverse cause and effect. The emphasis is not on defining major sins that will be punished in hell, but on the *inference of what constitutes a major sin from the punishments meted out in hell*. It appears as if, paradoxically, punishment does not follow from sin, but sin from punishment. However, the formula attributed to Ibn ‘Abbās became a commonly accepted definition, repeated by Makkī (fourth/tenth c.)⁶² and Ghazālī (late fifth/eleventh c.),⁶³ and taken as a point of departure by Dhahabī

⁵⁶ ‘Abd al-Raḥīm b. Aḥmad al-Qāḍī, *Daqā’iq al-akhbār fī dhikr al-janna wa-l-nār* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1404/1984). The work was first edited and translated by M. Wolff, *Mohammedanische Eschatologie* (Leipzig: Brockhaus, 1872). Wolff’s edition, based on two manuscripts located in German archives, differs slightly from the Beirut edition used here. See, for example, p. 56 l. 18 in Wolff’s edition. The work is mentioned in *GAL*, S1, 346. John MacDonald, “Islamic Eschatology III: The Twilight of the Dead,” *Islamic Studies* 4 (1965), 55–102, has a partial translation of the same text, without knowledge of Wolff, as is noted by van Ess, *Theologie und Gesellschaft*, IV, 521 n. 2. MacDonald states that the text contains material from Abū l-Layth al-Samarqandī’s (d. 393/1002–3) eschatological manual and is therefore “late.” However, he does not identify the author (see p. 56). Curiously, his series of six articles on the Muslim eschaton (*Islamic Studies* 3–5), like Abū l-Layth’s manual, lacks a description of hell. The English translation by A’isha ‘Abd al-Raḥmān al-Tarjumāna, *The Islamic Book of the Dead* (Norwich: Diwan Press, 1977), and the German translation by Stefan Makowski (from the English translation), *Das Totenbuch des Islam* (Bern: Scherz, 1981), as well as the reprint of Wolff’s translation (edited by Helmut Werner, *Das islamische Totenbuch*, Bergisch Gladbach: Lübbe, 2002), testify to the ongoing popular interest that Qāḍī’s work provokes also in Western readers.

⁵⁷ Qāḍī, *Daqā’iq al-akhbār*, 70.

⁵⁸ See, for example, the Ayyūbid diploma of investiture of a *muḥtasib* preserved in Qalqashandī, *Subḥ*, X, 461.

⁵⁹ Qurtubī, *Tadhkira*, 463. ⁶⁰ *Ibid.*, 462.

⁶¹ Ibn al-Jawzī, *Zād al-masīr*, II, 66. Cf. *EQ*, s.v. Sin, Major and Minor, V, 19b (M. Q. Zaman).

⁶² Makkī, *Qūt al-qulūb* (tr. Gramlich), III, 214. ⁶³ Ghazālī, *Iḥyā’ ‘ulūm al-dīn*, IV, 17.

(eighth/fourteenth c.).⁶⁴ The hook, then, was how one was to know what God had prescribed in terms of punishment in the hereafter. Punishments in hell are known through the two channels through which God had revealed Himself to the people: the Qurʾān (what Shāfiʿī called the *waḥy maṭlūʾ*, “recited revelation”) and His Messenger, the Prophet Muḥammad, the latter’s teachings being known by the *ḥadīth* (the *waḥy ḡhayr maṭlūʾ*, “non-recited revelation”).⁶⁵ It was through the rampant growth of the latter, especially of eschatological *ḥadīths*, that the catalogue of major sins expanded almost *ad infinitum*, despite the more reserved statements in systematic theological treatises and the traditions found in the canonical collections.⁶⁶ All in all, the field was left to the eschatological literature to develop, largely unhampered by outside factors,⁶⁷ into a more and more complex and rich collection of visions of the afterlife.

Fear in Muslim eschatology

Heretofore, this chapter has approached Islamic notions of sin and punishment in hell descriptively. I have revisited, and cast some doubt on, the common perception that the Sunnī literary tradition rejoices in a large degree

⁶⁴ Dhahabī, *Kabāʾir*, 8.

⁶⁵ Shāfiʿī still held the opinion that the question whether Prophetic *sunna* was a part of revelation was an open one; but, a century later, the *uṣūlīs* affirm that it is. See Baber Johansen, “The Muslim *fiqh* as a Sacred Law: Religion, Law and Ethics in a Normative System,” in Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim fiqh* (Leiden: Brill, 1999), 28–9. For the traditional Muslim concern for distinguishing between *waḥy maṭlūʾ*, that is, the Qurʾān, and *waḥy ḡhayr maṭlūʾ*, that is, Prophetic *sunna*, see Muḥammad b. Aḥmad Sarakhṣī, *al-Uṣūl* (Beirut: Dār al-Maʿrifā, n.d.), II, 72. How exactly these two channels of revelation relate to one another of course was, and is, a contentious issue. See Norman Calder and Andrew Rippin (eds.), *Classical Islam: A Sourcebook of Religious Literature* (London: Routledge, 2003), 179, with a translation of a suggestive passage from Ibn ‘Abd al-Barr’s (d. 463/1070) *Jamīʿ al-bayān wa-faḍlihi*. William A. Graham has marshaled convincing evidence that, in early Islam, the Muslim conception of revelation was thought to include “extra-Qurʾānic” revelations. See his *Divine Word and Prophetic Word in Early Islam* (The Hague: Mouton, 1977), 25–39, 107–10. Mohamed Ali, *Medieval Islamic Pragmatics* (Richmond: Curzon, 2000), comes to the same conclusion from a Western philosophical point of view: namely, that the Qurʾān and the *ḥadīth* are “one utterance,” both together forming the Islamic revealed text.

⁶⁶ This tendency no doubt was reinforced by the triumph of traditionalist Islam and its emphasis on *ḥadīths*, a moment that cannot be dated with accuracy but appears to have come about around the middle or later part of the Saljūq period. See Leder, *Ibn al-Ġawzi*, 25; Makdisi, *Ibn ‘Aqīl*, 372.

⁶⁷ Of course, there were mechanisms in place to distinguish authentic from forged traditions. *Ḥadīth* criticism (‘*ilm al-ḥadīth*) neatly categorized different kinds of *ḥadīths*, discarding many. However, the criteria for admission of dubious *ḥadīths* in the eschatological books were much more flexible than in the collections that were made for use in the legal sciences. Ibn al-Jawzī, himself not shy about using eschatological traditions, criticized no less a man than the celebrated Ghazālī for incorporating too many spurious eschatological *ḥadīths* in his writings. See his *Talbīs Iblīs* (Cairo: Idārat al-Ṭibā’a al-Miṣriyya, 1352/[1933]), 177. However, most others opined that “it cannot be criticized, since to use such traditions is legitimate when inspiring hope or fear.” This was the view of Ibn Kathīr and Nawawī, quoted in T. J. Winter, “Introduction,” in Winter (trans.), *The Remembrance of Death and Afterlife: Book XL of the Revival of the Religious Sciences* (Cambridge: Islamic Texts Society, 1989), xx.

of salvation certainty, allowing even the grave sinner access to paradise. Instead, I have suggested that, at least on the level of the popular *imaginaire*, punishment in hell was a very concrete threat. I now turn to an analysis of the inner factors that led to the flourishing of the eschatological idiom. What motivated the growth of traditions specifying punishment in the hereafter? How can one explain the popularity of the eschatological idiom? I will conclude this section with a consideration of some of the psychological forces that were at work in the formation, and ongoing popularity, of eschatological reports about punishment in hell.

To a certain extent, fears of punishment in God's heavenly court of justice and in hell can be explained on the basis of ascetic trends within Islam. Propensities for self-scrutiny, self-doubt, and self-accusation existed in Islam from early on.⁶⁸ Abū 'Abd Allāh al-Ḥārith b. Asad al-Muḥāsibī (d. 243/857), whose scrupulous self-introspection had repercussions in later ascetic writings, is perhaps the most well-known example.⁶⁹ His *K. al-Tawahhum* ("Book of Inspection") plays with the notion that salvation may be near while damnation always remains a possibility. The believer, on his way over the Bridge (*ṣirāṭ*) that leads into paradise, may slip any time:

Look at yourself [*tawahhim nafsaka*]! Now you are reaching the end [of the Bridge]. You feel in your heart, irresistably, that you are saved; but still, your uneasiness increases . . . In your heart, you have an intuition of being close to God Exalted [*jiwār Allāh*], and you desire to please God. Finally, you reach the end. You make a step. You advance one of your legs toward the little square [*'arṣa*] between the end of the Bridge and the entrance to the Garden. You put it on the little square opening up behind the Bridge. Your other foot is still on the Bridge. And both your fear and your hope increase in your heart, irresistably.⁷⁰

As this passage suggests, God's mercy is only *one element* in pious imaginings of the hereafter. Feelings of guilt, fear of God's wrath, and the suspicion that punishment is deserved constitute the other side of the coin. It is true that medieval Muslim eschatological manuals "delight in elaborating the stories about God's seemingly endless mercy for the wrongdoers."⁷¹ However, they also paint, as I will show presently, in cruel colors the endless and gruesome punishments of all sorts of Muslim offenders in hell. It is therefore somewhat one-sided to think that "popular belief chose to see that all but the most sinful

⁶⁸ See Waldmann, "Islamic Eschatology," 155.

⁶⁹ See van Ess, *Die Gedankenwelt des Ḥārith al-Muḥāsibī* (Bonn: Universität Bonn, 1961). Muḥāsibī's *K. al-Tawahhum* was known to, and influenced, Ghazālī's fortieth chapter of the *Iḥyā' ulūm al-dīn*, the "Book of Remembrance of Death and the Afterlife [*K. Dhikr al-mawt wa-mā ba'dahu*]," even if, according to Timothy Winter, there is only "a modest correspondence between the two works." See Winter, "Introduction," xix. However, what is striking in both works is the fact that the author directly addresses the reader in the second person.

⁷⁰ Abū 'Abd Allāh al-Ḥārith b. Asad al-Muḥāsibī, *K. al-Tawahhum* (Paris: Librairie C. Klincksieck, 1978), §116.

⁷¹ Smith and Haddad, *The Islamic Understanding of Death and Resurrection*, 82.

will be saved.”⁷² In fact, the promise of salvation and the threat of merciless retribution for even minor sins coexist at all times, often within the same text. The eschatological manual attributed to ‘Abd al-Raḥīm al-Qāḍī, which is perhaps the most graphic and terror-inspiring of all the manuals, is a case in point. On the one hand, Qāḍī cites traditions that accord the grave sinners a lighter treatment, in comparison with the unbelievers, in the top layer of hell; for example, their faces are not to be blackened by hellfire. On the other hand, some traditions suggest that certain major sins will be punished everlastingly. Then again Qāḍī offers compromise traditions, stating that “the people of the markets and of passions [*ahl al-aswāq wa-l-hawā*]” will be punished in hell for 1,060 years.⁷³ Ghazālī also indulges in numerical speculations that appear to negotiate between immediate salvation and eternal punishment. He states that “those who are more highly esteemed in the eyes of God are taken out of the Fire after a thousand years, and they are charred black. Al-Ḥasan al-Baṣrī used to say in his discourse, ‘Oh, that I might be that man!’”⁷⁴

Such vacillation between bliss and doom reflects what the German scholar of religion Rudolf Otto famously termed the *fascinans* and the *tremendum* aspect of the experience of the Divine.⁷⁵ No other categories in the study of religion have been used (and misused) as much as these two, but the fear-inspiring side (*jalāl*) of God no doubt is powerfully manifest in Muslim eschatology, as is His mercy and beauty (*jamāl*).⁷⁶ Accounts of the Prophet’s journey into hell and heaven are particularly apt to show this double face of the Divine, by presenting the audience with the Prophet’s vision both of the heavenly realms and of the gruesome punishments meted out to sinners. Even though God’s justice toward humankind is never put in question – “God does not treat them tyrannically, for God is not a tyrant toward His servants”⁷⁷ – His justice is no less “terrible” for that. It is an integral part of Muḥammad’s meeting with God that he be shown, before he is taken into the heavens, “God’s warnings and the might of His power [*ibaruḥu wa-‘aẓīm sulṭānihī*].”⁷⁸

It appears that *ṣūfī* authors for whom love and fear of God were both essential aspects of devotion would be especially inclined to play on the

⁷² *Ibid.*, 81. ⁷³ Qāḍī, *Daqā’iq al-akḥbār*, 109, 115, 116, 117.

⁷⁴ Ghazālī, *al-Durra al-fākhira*, 95. Ghazālī takes this *ḥadīth* from Makkī, *Qūt al-qulūb* (tr. Gramlich), III, 221. Makkī also reports the opinion that the last monotheist remaining in hell before being taken into paradise remains there for 7,000 years. See *ibid.*, III, 220.

⁷⁵ Rudolf Otto, *Das Heilige: über das Irrationale in der Idee des Göttlichen und sein Verhältnis zum Rationalen* (1917, Munich: Beck, 1979), 14–22, 42–52.

⁷⁶ Tor Andrae, *In the Garden of Myrtles: Studies in Early Islamic Mysticism* (Albany: SUNY Press, 1987), 100. In fact, Andrae suggests that the *tremendum* aspect is the dominant one in the Qur’ān, and that the prospect of the intercession (*shafā’a*) of the Prophet “does not signify a more confident religious hope . . . It is merely an opiate against a fear, which continues to be the dominant trait of the faith.”

⁷⁷ Tha’labī, *Tafsīr*, VI, 57. ⁷⁸ Ṭabarī, *Jāmi’ al-bayān* (ed. Beirut), XV, 5.

jalāl/jamāl dichotomy.⁷⁹ Qushayrī (d. 465/1072) relates an *isrāʾ* account that is rather eloquent in this respect. In this story, two angels show Muḥammad groups of people in a barren and dark landscape who suffer the cruelest punishments. Every time the Prophet asks who they are, his two companions simply urge him to proceed along the path. Then, abruptly, Muḥammad is taken into a lush green garden in which he witnesses groups of people delighting in paradisaical pleasures. Only then do his companions reveal to him the identity of the tortured people he had seen before: they were the sinners in hell. What the account accomplishes, then, is that the Prophet's terrifying and reassuring visions of the hereafter are intimately interwoven. The sudden changes from expressions of God's wrath to those of His mercy illustrate states of both fear and hope of the protagonist, the Prophet Muḥammad, as well as of the author of the story.⁸⁰ Tor Andrae, in his masterful study *In the Garden of Myrtles*, has indentified "pre-*ṣūfī* asceticism" as a "religion of fear."⁸¹ The early *ṣūfīs'* terrified reverence for God, their fear of punishment in the hereafter, is captured by Sarī al-Saqaṭī (d. 253/867), who famously remarked that "I look at my nose twice every day, because I am afraid that my face may have turned black," thus anticipating the charring of faces in the Fire.⁸²

Important though this mode of religious expression may be, let us not reduce all eschatological literature to the fear-driven piety of early Islamic asceticism. Other factors contributed to the growth of traditions about the Day of Judgment and hell and the punishments therein. Let us take a closer look at hell's nature, location, and topography, as well as at its inhabitants and the ways in which they are punished. On the basis of the material gathered, I propose a fourfold interpretive model for representations of the Muslim hell: in addition to the ascetic-psychological dimension (which I have examined in the preceding paragraphs), I will discuss the structuralist, the moral-didactic, and the performative dimensions of Muslim traditions of punishment in the hereafter.⁸³

⁷⁹ Annemarie Schimmel, *Mystical Dimensions of Islam* (Chapel Hill: University of North Carolina Press, 1975), 44–5, discusses this issue in the context of the mystic Dhū l-Nūn (d. 246/861). See also William C. Chittick, *Sufism: A Short Introduction* (Oxford: Oneworld, 2000), 9–12. John B. Carman, in his *Majesty and Meekness: A Comparative Study of Contrast and Harmony in the Concept of God* (Grand Rapids: Eerdmans, 1994), 11, interprets the *jamāl/jalāl* polarity as "the link between two apparently opposite qualities that belong or describe the same reality." Cf. *ibid.*, 323–46.

⁸⁰ 'Abd al-Karīm b. Hawāzin al-Qushayrī, *K. al-mū'rāj* (Cairo: Dār al-Kutub al-Ḥadītha, 1384/1964), 39–42. Another telling example is the *mū'rāj* account from Ibn Ḥibbān (d. 354/965): one moment the Prophet is filled with admiration for God's luminosity; in the next he is thrown into a "sea of darkness" and of terror. See the version preserved in Suyūṭī, *al-La'ālī al-maṣnū'a*, I, 66.

⁸¹ Andrae, *In the Garden of Myrtles*, 100. See *ibid.*, 33–54, 91–106.

⁸² *Ibid.*, 101; *EL2*, s.v. Sarī al-Saqaṭī, IX, 56a–59a (B. Reinert). The story appears in Ibn al-Jawzī, *Ṣīfat al-ṣafwa*; Abū Nu'aym al-Iṣfahānī, *Ḥilyat al-awliyā'*; and al-Kalābādhī, *al-Ta'arruf li-madhhab ahl al-taṣawwuf*. See the references given by Andrae and Reinert.

⁸³ The only similar attempt to divide Muslim eschatological thought into different categories is, as far as I know, John B. Taylor's "Some Aspects of Islamic Eschatology," *Religious Studies* 4 (1968), 57–76. Taylor develops three categories of Qur'anic eschatology: didactic, apocalyptic, and mystical.

A descriptive survey of the Muslim hell may in itself have some value. Little has been written about the geography of the Muslim hell in any of the major Western languages, least of all in English.⁸⁴ Paradise has aroused far more scholarly interest.⁸⁵ Hell deserves, as it were, to be put back on the map.

The Muslim hell in Western scholarship

Why is it that the Muslim hell has not received more attention by Western scholars of Islam, even though traditions about it occupy an important place in the eschatological literature? Islamic scholarship up to the present has mostly contented itself with viewing hell as the counter-image of paradise, an imaginary landscape modeled after heaven, and thus of secondary ontological order. Structural asymmetries, such as the absence of a Lord of Hell (Iblīs being one of the tortured inhabitants of hell, not its master), have not succeeded in casting doubt on this picture.⁸⁶ However, while spiritual ascent may be more palatable to some than descent into the nether realms, it is hard to see why the former should deserve *a priori* more attention than the latter, given that the Qur'ān (see 5:118 and *passim*) and *ḥadīths* (including the *isrā'* stories) stress God's reward *and* punishment.⁸⁷ As Navid Kermani remarks, "no doubt in the Qur'ān God is represented in many facets of mercy; however,

⁸⁴ The only monograph that deals with the Muslim hell exclusively is, to my knowledge, Jonas Meyer's Ph.D. dissertation "Die Hölle im Islam." There is a score of important studies of the Muslim apocalyptic, but not of Islamic conceptions of the afterlife. For the former, see Wilferd Madelung, "Apocalyptic Prophecies in Himṣ in the Umayyad Age," *Journal of Semitic Studies* 31 (1986), 141–85; Michael Cook, "Eschatology and the Dating of Traditions," *Princeton Papers in Near Eastern Studies* 1 (1992), 23–47; David Cook, "Moral Apocalyptic in Islam," *SI* 86 (1997), 37–69; David Cook, *Studies in Muslim Apocalyptic* (Princeton: Darwin, 2002). It is also interesting to note that the new edition of the *Encyclopaedia of Islam* devotes multiple pages to the entry "Djanna" by Louis Gardet (II, 447a–452a), while "Djahannam" (by the same author) is given only a couple of paragraphs (II, 381b–382a).

⁸⁵ For example, *EQ*, I, 176b–181a (M. Sells), deals with *isrā'* exclusively under the heading of "ascension," even though the *mī'rāj* ("ascent") of the Prophet is not explicitly mentioned in the Qur'ān. In fact, Muḥammad's journey into hell forms a significant part of many exegetes' interpretations of verse 1 of *sūrat al-isrā'*. See van Ess, *The Flowering of Muslim Theology* (Cambridge: Harvard University Press, 2006), 47–8.

⁸⁶ See *EQ*, s.v. "Hell and Hellfire," II, 414a–419a, esp. 417a (Rosalin W. Gwynne). Not only are the parts of the *isrā'* story dealing with Muḥammad's visit to hell shorter than his ascent into the seven heavens, they are also structured rather differently.

⁸⁷ See *EQ*, s.v. Form and Structure, II, 258a–b (A. Neuwirth): "both depictions are particularly rich in imagery and together form a double image . . . As such, they remind us of the closely juxtaposed pictorial representations of both sections of the hereafter depicted in Church iconography, thus suggesting the designation of 'diptycha.'" Vuckovic, *Heavenly Journeys, Earthly Concerns*, 113–21, is one of the few exceptions among scholars who study hell as an important element of the *isrā'* story. The scope of her analysis of hell is limited, however, because she uses *isrā'* material to the exclusion of other sources. For the lack of interest in popular eschatology in the study of ancient Christianity, see Martha Himmelfarb, *Tours of Hell: An Apocalyptic Form in Jewish and Christian Literature* (Philadelphia: University of Pennsylvania Press, 1983), 4.

as in the Bible, these facets are inextricably linked with His violence, His malice [*Arglist*] and His terror.”⁸⁸

The relative lack of interest among scholars of Islam in the Muslim hell has its causes. Traditions about the Muslim hell, its inhabitants, and their punishments are convoluted, heterogeneous, often shockingly violent; sometimes they border on the obscene. Fritz Meier, in an otherwise inspiring article on the “ultimate origin” of the Islamic hereafter, argued that “[t]he whole basic view of ultimate origins and the hereafter . . . is hidden in Islamic literature behind a decorative structure of baroque traditions.”⁸⁹ This statement betrays a preference for clear (rather than “decorative”) structures, a desire for taxonomy and categorization: in other words for theological rationalization. If, on the other hand, the material at hand is found to be internally diverse, or even contradictory (as is the Islamic eschatological literature), it is dismissed as “baroque” or even “bizarre.”⁹⁰

However, I argue that the admittedly elaborate style of Islamic eschatological *ḥadīths* is reflective not just of a taste for the bizarre. This literature may be trying to tell us a different story, one that is not immediately self-evident and not easily amenable to systematization. As Meier no doubt would have granted, eschatologists are not engaged in doing systematic theology. In fact, one ought to guard against hasty value judgments about the people who wrote, read, or listened to this kind of literature. Following an idea expressed by Brad Gregory, it would appear a more fruitful approach to “set aside what we think in order to listen to what they said,” and open up, for a moment, our “willingness to take at face-value the self-understandings and self-presentations of the past.”⁹¹ Robert Orsi has underscored “the importance of studying and thinking about despised religious idioms, practices that make us uncomfortable, unhappy, frightened – and not just to study them but to bring ourselves into close proximity to them, and not to resolve the discomfort they occasion by imposing a normative grid.”⁹² Such an open interpretive strategy may soon reveal that representations which one may find distasteful or even repugnant actually follow a compelling logic of human suffering and how to make sense of it. To quote Orsi again, “to work toward some understanding(s) of troubling religious phenomena is not to endorse or sanction

⁸⁸ Navid Kermani, *Der Schrecken Gottes: Attar, Hiob und die metaphysische Revolte* (Munich: Beck, 2005), 161.

⁸⁹ Fritz Meier, “The Ultimate Origin and the Hereafter in Islam,” in Girdhari L. Tikku (ed.), *Islam and Its Cultural Divergence: Studies in Honor of Gustave E. von Grunebaum* (Urbana: University of Illinois Press, [1971]), 103.

⁹⁰ *Ibid.*, 104. Such sentiments can sometimes be detected among the Muslim authors. Ghazālī observed that “the details of the sorrows, laments, trials, and suffering which hell encompasses are without end.” See his *Ihyāʾ*, IV, 533.

⁹¹ Brad Gregory, *Salvation at Stake: Christian Martyrdom in Early Modern Europe* (Cambridge: Harvard University Press, 1999), 15, 13.

⁹² Orsi, “Jesus Held Him So Close,” 7.

them . . . but we cannot dismiss them as inhuman, so alien to us that they cannot be understood or approached, only contained or obliterated."⁹³

It is in this spirit that I would like to take on the task of giving back to the Muslim hell the attention it deserves. Contrary to the common perception that hell is a mere reflection of paradise, I would like to propose that we understand the Muslim hell as a mirror image of *this* world. It is hell's significance for the very concrete and tangible lives of people living in the Saljūq period that this study seeks to investigate; it is not my goal to test the theological or literary consistency, let alone the veracity, of claims about the realities of the afterlife. As I will show, hell's presence on earth was indeed thought to be pervasive. In fact, it could be intuited almost physically. As a *ḥadīth* states, "hellfire is closer to you than the strap of your sandal."⁹⁴

Theological preliminary: hell's coexistence

While created like the rest of creation, hell, according to the Qur'ān, has no end. Multiple passages suggest that it is everlasting unto eternity.⁹⁵ The passage in Qur'ān 11:106–7, which states that punishment in hell is eternal "except as your Lord wills" sometimes was interpreted to imply that hell would perish one day and that only paradise was everlasting.⁹⁶ But, all in all, this was not the majoritarian position. The creed (*waṣīyya*) of Abū Ḥanīfa (d. 150/767) and the document known as the *Fiqh Akbar II* both affirm that hell is everlasting (*abadi*), as does the creed of the Māturīdī theologian Nasafi (d. 537/1142).⁹⁷ Ṭabarī held that hell is of limited duration only for those Muslims who are purged by the Fire and then allowed into the Garden, and Zamakhsharī, in his commentary on Qur'ān 11:106–8, explained that the expression "except as your Lord wills" does not imply the temporal limitedness of hell, but rather that there are many different punishments at God's disposal, for example, intense cold in addition to scorching fire.⁹⁸

A different issue was whether paradise and hell were created at the beginning or at the end of time. Some Mu'tazilites argued that paradise and hell would be created only on the Day of Judgment, that is, *a parte ante*. It would be futile, they reasoned, if a king built a palace without actually having anybody inhabit it. God, states one of the foundational tenets of the Mu'tazila,

⁹³ *Ibid.* ⁹⁴ Daylamī, *Firdaws al-akhbār*, II, 189.

⁹⁵ J. Robson, "Is the Moslem Hell Eternal?," *Moslem World* (1938), 386–96. Cf. the formula *khālidīn fihā abadan*: Qur'ān 4:155, 5:119, 9:100, 18:108, 64:9.

⁹⁶ For example, Binyamin Abrahamov, "The Creation and Duration of Paradise and Hell in Islamic Theology," *Der Islam* 79 (2002), 96, reports this view from Ibn Taymiyya and Ibn Qayyim.

⁹⁷ Arent Jan Wensinck, *The Muslim Creed: Its Genesis and Historical Development* (1932, London: F. Cass, 1965), 129; Watt, *Islamic Creeds*, 60, 82.

⁹⁸ Tha'labī, *Qīṣaṣ al-anbiyā'* ([Cairo]: Dār Iḥyā' al-Kutub al-'Arabiyya/Īsā al-Bābī al-Ḥalabī, n.d.), 7, says that there is a hut in the lowest layer of hell which is half-filled with poison and half-filled with freezing cold (*zamharīr*). See also Robson, "Is the Moslem Hell Eternal?," 389.

does not play games of futility (*‘abath*).⁹⁹ However, the Mu‘tazilites were the exception to the rule. The majority view was that paradise and hell had been created at the beginning of time, together with the world and all the rest of creation. As the Qur‘ān says, paradise “has been prepared for the godfearing [*u‘iddat li-l-muttaqīn*]” (3:133), and likewise, hell “has been prepared for the unbelievers” (3:131). This was generally taken to mean that both paradise and hell were “already created.”¹⁰⁰ Thus, ‘Aḍud al-Dīn al-Ījī (d. 756/1355) could hold that Adam and Eve had already dwelt in paradise.¹⁰¹ Also, the fact that the Prophet Muḥammad had seen paradise and hell during his night journey was taken as a proof that both otherworlds existed alongside the worldly realm.¹⁰² Reports of people seemingly dead who came back to life from either paradise or hell were part of the eschatological literature that flourished since the time (at least) of Ibn Abī l-Dunyā (d. 281/894).¹⁰³ In conclusion, the common belief was that hell coexisted in time with the temporal world. However, while the inhabited world was going to perish at the end of time, hell would continue to exist unto eternity. On the basis of this belief, it was perhaps not far-fetched to ask what hell looked like and where exactly it was located.

Hell’s shape and location

In the larger cosmological frame, many medieval Muslims believed that hell and paradise formed the lower and the upper part of the universe, which was most commonly thought of as having a globular shape.¹⁰⁴ The seven earths of which the Qur‘ān speaks (65:12) were interpreted by some to be seven layers (*ṭabaqāt*) situated on top of each other, with the inhabited earth as the top layer.¹⁰⁵ The seven earths were vaulted, in ascending order, by the seven layers of heaven. According to a tradition from Abū Mālik (d. 179/795) preserved by Suyūṭī (d. 911/1505), the universe rests on a rock. This rock, called *sijjīn*, is the final piece of creation left over when everything else was finished.¹⁰⁶ The *ḥadīth*

⁹⁹ This was the position of Dirār b. ‘Amr (d. 180/796). See van Ess, “Das begrenzte Paradies,” in Pierre Salmon (ed.), *Mélanges d’Islamologie, volume dédié à la mémoire de Armand Abel* (Leiden: Brill, 1974), 116; van Ess, *Theologie und Gesellschaft*, III, 53–4. Later Mu‘tazilites who defended this view included Abū l-Husayn al-Baṣrī (d. 436/1044). See Abrahamov, “The Creation and Duration of Paradise and Hell,” 91.

¹⁰⁰ Abū l-Ḥasan ‘Alī b. Ismā‘īl al-Ash‘arī, *Maqālāt al-islāmiyyīn wa-ikhtilāf al-muṣallīn* (Istanbul: Devlet Matbaası, 1929–30), 475; Pazdawī, *Uṣūl al-dīn*, 170; Ghazālī, *Ihyā’*, IV, 534: “i‘lam anna l-lāha khalaqa l-nār bi-ahwālīhā.” Cf. van Ess, “Das begrenzte Paradies,” 109.

¹⁰¹ Abrahamov, “The Creation and Duration of Paradise and Hell,” 88.

¹⁰² Qurṭubī, *Tadhkira*, 470. This view was attributed to ‘Alī al-Riḍā (d. 203/818). See van Ess, “Das begrenzte Paradies,” 118, 120.

¹⁰³ ‘Abd Allāh b. Muḥammad Ibn Abī l-Dunyā, *K. Man ‘āsha ba’d al-mawt* (Beirut: ‘Ālam al-Maktab, 1406/1986), 60–5, 82–4.

¹⁰⁴ Anton Heinen, *Islamic Cosmology: A Study of as-Suyūfī’s al-Hay’a as-sanīya fī l-hay’a as-sunniya* (Beirut: Franz Steiner, 1982), 86. Cf. *EI2*, s.v. *Samā’*, VIII, 1014a–1018a (A. Heinen).

¹⁰⁵ Yāqūt, *Mu‘jam al-buldān*, I, 20, reports this opinion without, however, passing judgment on the correctness of this view.

¹⁰⁶ Heinen, *Islamic Cosmology*, 88.

tradition usually locates this rock in the lowest earth,¹⁰⁷ or under the seventh earth,¹⁰⁸ or equates it with the lowest earth.¹⁰⁹ Whatever its exact meaning (more on this below), *sijjīn* was known from the Qur'an (83:7–9) to be a part of the landscape of hell. Thus, it appears that, from early on, the seven layers of the earth, a model of old Near Eastern origins, had fused with the seven layers of the Muslim hell.¹¹⁰

If hell was the lower part of a globe, it made sense to think of the seven layers of hell as concentric circles arranged on top of each other, like a vast funnel with a brim (*shafīr*) and bottom (*qa'ar*),¹¹¹ composed of descending terraces leading downwards into a central pit.¹¹² However, there is a good amount of imprecision, not to say confusion, in these cosmological schemes, a state of things that was apt to arouse suspicion. The six canonical *ḥadīth* collections reflect a rather restrained imagination.¹¹³ However, more imaginative reports about the geography of hell appear to have circulated widely. The geographer Yāqūt (d. 626/1229) judged that such mythological cosmological notions were nothing but “things about which the storytellers talk in order to inspire horror and awe in the common people [*ashyā'u llatī takallama bihā l-quṣṣās li-l-tahwīl 'alā l-'amma*].”¹¹⁴

In accordance with the idea that hell was a subterranean structure, there was some speculation as to whether it was connected to the surface of the earth by a passageway of sorts. According to an ancient tradition, the sulphurous well of Barhūt in the Wādī Barhūt in Ḥadramawt (modern-day

¹⁰⁷ Ibn Abī Shayba, *Muṣannaf*, III, 55; Ibn Ḥanbal, *Musnad*, IV, 287; 'Alā' al-Dīn 'Alī b. 'Abd al-Malik al-Muttaqī, *Kanz al-'ummāl* (Beirut: Dār al-Kutub al-'Ilmiyya, 1419/1998), XV, 265.

¹⁰⁸ Abū l-Shaykh, the fourth-/tenth-century compiler of a cosmological manual, which bears the standard title of “The Book of Majesty” (*K. al-'azama*), reports this from the traditionist Mujaḥid. See Heinen, *Islamic Cosmology*, 143.

¹⁰⁹ Ṭabarī, *Tahdhīb al-āthār* (Cairo: Maṭba'at al-Madanī, n.d.), II, 494, 496; and also Daylamī, *Firdaws al-akhbār*, II, 476: *sijjīn asfalū saba' arḍīn*. A tradition in Tha'labī, *Qīṣaṣ al-anbiyā'*, 6, however, locates *sijjīn* in the sixth layer of hell (*al-arḍ al-sādisa*), “a huge stone to which are brought immoral souls.” See also Ghazālī, *al-Durra al-fākhira*, 18. Suyūṭī preserves a tradition according to which it is the place where the souls of the unbelievers are in the belly of black birds. See Smith and Haddad, *The Islamic Understanding of Death and Resurrection*, 55, quoting Suyūṭī's *Buṣhrā al-ka'ib bi-liqā' al-ḥabīb*. For the topos of black birds as the habitat of wicked souls, see van Ess, *Theologie und Gesellschaft*, IV, 523, referring to Ṭabarī, *Jamī' al-bayān* (ed. Shākir), XXIV, 71:12ff.

¹¹⁰ Heinen, *Islamic Cosmology*, 87; *EI2*, s.v. Samā', VIII, 1014a–1018a (A. Heinen). See also a tradition in Tha'labī, *Qīṣaṣ al-anbiyā'*, 7, from Salama b. Kuhayl > Abū l-Zarqā' > 'Abd Allāh (b. 'Abbās): “wa-l-nār al-yawma fī l-arḍ al-suflā fa-idhā kāna ghadd ja'alāhā llāh ḥaythu yashā'.” See also the Ḥanbalite creed in Watt, *Islamic Creeds*, which clearly identifies “the seven earths that are below one another” with hell, 36.

¹¹¹ Qurtubī, *Tadhkira*, 479.

¹¹² Cf. the figure in Asín, *La escatología*, 147, which is based on Ibn al-'Arabī's (d. 638/1240) conception of the concentric circles of hell in the *Futūḥāt al-makkiyya* (Cairo: Būlāq, 1293/1876), III, 557. However, the diagrams in *EI2*, s.v. Samā', VIII, 1014a–1018a (A. Heinen), show the seven layers of heaven as a vault over the layers of hell arranged in the shape of a pyramid. See also Smith and Haddad, *The Islamic Understanding of Death and Resurrection*, 85.

¹¹³ This is also pointed out by Macdonald, “The Twilight of the Dead,” 57.

¹¹⁴ Yāqūt, *Mu'jam al-buldān*, I, 24.

Yemen), haunted by the souls of infidels, was the gate to the nether regions.¹¹⁵ However, the notion that the entrance to hell was to be found in Gehinnom valley (the biblical “valley of Hinnom”¹¹⁶) near Jerusalem had more currency. The Qurʾān says that “a wall [*sūr*] is put up between them [that is, between paradise and hell], with an inside gate in which is mercy and an outside gate in which is punishment” (57:13). The Muslim commentators conflated these two notions into the belief that the *sūr* of Qurʾān 57:13 was in fact the wall (*ḥāʾiʿ*) that separated the Ḥaram al-Sharīf in Jerusalem from the Wādī Jahannam/Gehinnom. In other words, they located the entry to hell somewhere between the eastern wall of the temple precinct and the Mount of Olives.¹¹⁷ Further east, other traditions, often of local character, were known. The late sixth-/twelfth-century Persian geographer Ṭūsī wrote about a valley called Jahannam in the neighbourhood of Balkh in Afghanistan:

There is a valley in Samangān near Balkh [*bi-Samangān-i Balkh*], which is a valley that sinks into the ground [*khasf shud*]. The fearless and ruthless [*bī-bāk wa-zālim*] joke that it goes down so steeply [*bi-yak-bār furū shud*] that if they throw a stone into the cavity [*khasf*] one cannot see [it reaching] the bottom. In this cavity, strange birds have countless nests. Nobody knows where these birds came from [*az kuja khāstand*].¹¹⁸

¹¹⁵ Juan Pedro Monferrer Sala, “A propósito de Wādī Yahannam,” *Al-Andalus Maghreb* 5 (1997), 151; *EL2*, s.v. Barhūt, I, 1045a (G. Rentz). See also van Ess, *Theologie und Gesellschaft*, IV, 522 n. 13, who states that Ibn Ḥazm, *Fiṣal*, IV, 69, thought that the notion of Barhūt as the entrance to hell was of Shīrī origin. For locations of the earthly paradise, see *ibid.*, IV, 395 (Jerusalem), 522. Asín, *La escatología*, 96, delivers a curious mistranslation of Abū l-ʿAlāʾ al-Maʿarrī, *Risālat al-ghufrān* (Cairo: Dār al-Maʿārif, [1956]): what he takes to be the opening of a volcano, sprouting with flames, is not the entry to hell, but rather the head of Ṣakhr, the late lamented brother of the pre-Islamic poetess al-Khansāʾ, who describes Ṣakhr’s aura of leadership as “a head on which blaze flames of fire,” as translated by Gregor Schoeler, *Paradies und Hölle: die Jenseitsreise aus dem “Sendschreiben über die Vergebung”* (Munich: Beck, 2002), 172.

¹¹⁶ 2 Kings 23:10; Jerem. 19:6; Isaiah 30:32. This is the place where, allegedly, children used to be burned alive as a sacrifice to the Phoenician god Moloch. See 2 Ezra 11:30; Joshua 15:8; 4 Kings 13:10; and Jerem. 7:31–2.

¹¹⁷ Monferrer Sala, “A propósito de Wādī Yahannam,” 152. In fact, as Asín, *La escatología*, 136, relates, until recent times people believed that under the Dome of the Rock a “well of the souls [*bīr al-arwāh*]” could be found. This appears to resonate with the idea that the souls of the unbelievers are in *sijjīn*. See, as a commentary to Qurʾān 83:7 (“Nay, but the book of the libertines is in *sijjīn*”): ʿAbd Ibn Ḥamīd al-Kussī, *Musnad* (Cairo: Maktabat al-Sunna, 1408/1988), I, 266; Abū Zakariyyā Yahyā b. Sharaf al-Nūrī, *Sharḥ al-Nūrī ʿalā ṣaḥīḥ Muslim* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1392/[1972]), II, 219, XVII, 205; ʿAlī b. Sulṭān Muḥammad al-Qārī al-Harāwī, *Mirqāt al-mafātīḥ Shārh Mishkāt al-maṣābiḥ* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1422/2001), IV, 90, 92, X, 565. See also Thaʿlabī, *Qiṣaṣ al-anbiyāʾ*, 6–7. In early Judaism, there was a tradition that one of the three gates to hell was situated in a desert, and that the heat of the hot springs of Tiberias (in Palestine) were due to the fact that the water had passed through the gates of Gehenna. See MacDonald, “Islamic Eschatology VI: Paradise,” *Islamic Studies* 5 (1966), 355.

¹¹⁸ Muḥammad b. Maḥmūd b. Aḥmad al-Ṭūsī, *ʿAjāyib al-makhlūqāt* (Tehran: Nashr-i Kitāb, 1966), 293–4. This is a comprehensive *ʿajāʾib* work and a prequel to Qazwīnī’s more well-known *ʿAjāʾib al-makhlūqāt*, which quotes it extensively. Ṭūsī dedicated his work to the last Saljuq ruler Ṭuḡhril (III) b. Arslān b. Ṭuḡhril (II), Rukn al-Dunyā wa-l-Dīn (r. 571–90/1175–94).

Ṭūsī's account resonates with eschatological *ḥadīths* that specify that a stone thrown from the bridge leading over the hell-funnel travels seventy years before hitting bottom.¹¹⁹ As for the "strange birds" that Ṭūsī mentions, this seems to echo the notion that the souls of infidels and sinners haunt the gate to hell in the bellies of black birds.¹²⁰

Qurṭubī (d. 671/1272) devotes a whole chapter of his great eschatological manual to traditions that state that "hell is on this earth [*fī l-ard*]." He reports a tradition that warns the believer against performing the ritual ablution with sea-water, "for it is a layer of hell," presumably the top layer.¹²¹ Qurṭubī also quotes from Wahb b. Munabbih's Qur'ān commentary on *sūrat Qāf*, which reports a conversation between the prophet Dhū l-Qarnayn (commonly identified with Alexander the Great) and the legendary mountain Qāf. Qāf, according to ancient Iranian tradition, was the mountain range that surrounded the terrestrial world.¹²² Qāf explains that behind it there are lands that take five hundred years to traverse, followed by a mountain range which also takes five hundred years to cross. These mountains, Qāf goes on to say, have snow on them as a protection against the heat coming out of the entry gate to hell. "This indicates that hell is to be found on the face of the earth," concludes Qurṭubī, but he takes care to add that "God knows best its exact location and where on earth it is."¹²³ The sober-minded among the traditionists certainly felt a certain exasperation toward people who indulged in excessive speculation. Suyūṭī reports a *ḥadīth* on the authority of al-Ḥākim al-Nīsābūrī (d. 404/1014) in which a man comes to the Prophet, asking him about what he has seen during his night journey into heaven and hell. "O Muḥammad," inquires the man, a little too eagerly, "did you see a Garden the extension of which is as great as the heavens and the earth? And where is hellfire? Did you see the Night that enwraps everything? And where will the Day [of Gathering] take place?" Muḥammad's answer is curt: "God knows better!" he retorts, "God does whatever He wants!"¹²⁴

It is true that, despite notions that hell was located on earth, medieval Muslim cartographers in general did not mark hell on their maps.¹²⁵ From

¹¹⁹ Ṣan'ānī, *Muṣannaf*, XI, 422; Qurṭubī, *Tadhkira*, 357, 479; Muttaqī, *Kanz al-'ummāl*, XVI, 221; also Tirmidhī, *Sunan*, IV, 709, for a stone that falls for forty years.

¹²⁰ Tabarī, *Jamī' al-bayān* (ed. Shākir), XXIV, 71, 12ff. Cf. van Ess, *Theologie und Gesellschaft*, IV, 523.

¹²¹ Qurṭubī, *Tadhkira*, 473. Even a writer as early as Ibn Abī Shayba, *Muṣannaf*, I, 122, reports that there is a fire under the sea. See also Abū Dāwūd, *Sunan* (ed.), III, 6; Bayhaqī, *al-Sunan al-kubrā*, IV, 334, VI, 18. The tradition also appears in collections of forged *ḥadīths*. See Suyūṭī, *al-La'ālī al-maṣnū'a*, II, 3–4.

¹²² *EI2*, s.v. *Qāf*, IV, 400a–402b (M. Streck and A. Miquel).

¹²³ Qurṭubī, *Tadhkira*, 473; Tha'labī, *Qīṣaṣ al-anbiyā'*, 5.

¹²⁴ Heinen, *Islamic Cosmology*, 154.

¹²⁵ *EI2*, s.v. *Kharīṭa*, IV, 1077b–1083a (S. Maqbul-Ahmad). Cf. Idrīsī's map of the world from 548/1154 with the world map from Ebtorf, Germany (thirteenth c. CE), which is based on a religious or *heilsgeschichtliche* view of the world: Günter Kettermann, *Atlas zur Geschichte des Islam* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2001), 55–6.

this van Ess concludes that in Islam both hell and purgatory were defined in purely temporal terms (“rein zeitlich definiert”).¹²⁶ However, it would seem that the medieval Muslim cartographers (or, for that matter, the *mutakallimūn*) should not be taken as the only people representative of the ways in which medieval Muslims pictured the world. There was a strand in the *ḥadīth* that did care to localize hell spatially. It may seem superfluous, or even pedantic, to lavish attention on such questions of imaginary geographical detail. However, there may be some benefit to taking these reports seriously. Obviously, the importance of such traditions lies not so much in their capacity to establish (or not) the exact location of hell. Rather, they reflect a certain way of envisioning reality and, therefore, human existence. They warrant the important observation that, for some medieval Muslims, hell was contiguous with the inhabited world, or even that it encompassed (*tuḥīṭu*) the earth.¹²⁷ Traditions such as the ones presented here illustrate that on the level of popular imagination, which expressed common fears and hopes, the hereafter with its punishments was indeed close, not only in temporal but also in spatial respects.

Inside hell

Let us now turn to the structure of hell itself. The Qurʾān does not offer a detailed geography of hell, but only scattered references. In *sūra* 15:44, the Qurʾān states that hell has seven gates (*abwāb*) to each of which one group of the damned is assigned. These seven gates were soon fused with the idea that hell had seven layers constituting the nether regions of the globe, the term *bāb* (“gate”) becoming more or less synonymous with “layer” (*ṭabaqa*). ‘Alī b. Abī Ṭālib, according to a tradition, once explained to a group of *ṣaḥāba* that “the gates of hell are not like the gates in this world,” but rather that they are stacked up one upon the other. Reportedly, ‘Alī put his two flat palms on top of each other to make his point visually comprehensible.¹²⁸ According to another *ḥadīth*, the Prophet himself saw the seven layers of hell as lying on top of each other.¹²⁹

¹²⁶ Van Ess, *Theologie und Gesellschaft*, IV, 552.

¹²⁷ Daylamī, *Firdaws al-akḥbār*, II, 183; Abū Bakr Aḥmad b. ‘Alī al-Khaṭīb al-Baḡhdādī, *Tārīkh Baḡhdād* (Beirut: Dār al-Kutub al-‘Ilmiyya, n.d.), II, 291; Muttaqī, *Kanz al-‘ummāl*, XIV, 166. See also *ibid.*, III, 352.

¹²⁸ Ibn Abī Shayba, *Muṣannaf*, VII, 49; Qurtubī, *Tadhkira*, 461; Muttaqī, *Kanz al-‘ummāl*, XIV, 278. Seven layers are also on top of each other to form the heavens. See Shihāb al-Dīn Abū l-Faḍl Aḥmad b. ‘Alī Ibn Ḥajar al-‘Asqalānī, *Faṭḥ al-bārī sharḥ Ṣaḥīḥ al-Bukhārī* (Beirut: Dār al-Ma‘rifa, n.d.), VI, 293.

¹²⁹ Suyūṭī, *al-La‘ālī al-maṣnū‘a*, I, 66. At times, a terminological distinction was made between the layers of heaven, called *darajāt* (“stairs upwards”), and the layers of hell, called *darakāt* (“stairs downwards”). See Qurtubī, *Tadhkira*, 461; Suyūṭī, *al-La‘ālī al-maṣnū‘a*, I, 69. For the root *d-r-k*, see Qurʾān 4:144: “Inna l-munāfiqīna fī l-darak al-asfal min al-nār.”

In addition to *al-nār* (“the Fire”), the Qurʾān uses several other names for hell. In the exegetical literature, seven of these names, including *al-nār*, were picked out and correlated with the seven layers of hell.¹³⁰ The further down sinners are consigned, the heavier their punishment is. I list the seven names, with their respective English (Arberry, O’Shaughnessy) and German (Paret) translations, in descending order, according to the most common model:¹³¹

- (1) *Jahannam* (2:206; 3:12; passim), “Gehenna,” “Hölle”: the term, like *jaḥīm* a cognate of the Hebrew *gehinnom*, appears seventy-seven times in the Qurʾān. Originally a synonym for *nār* (which in the sense of “hellfire” is used 111 times in the Qurʾān), in later exegesis it acquired a more particularized meaning.¹³²
- (2) *Saʿīr* (4:10; 4:55; 22:4; passim), “Blaze, a fiercely kindled flame,” “Höllensbrand,” is mentioned sixteen times in the Qurʾān.¹³³
- (3) *Ḥuṭama* (104:4, 5), “the Crusher, glutton,” “Zermalmer, Vielfraß,” is mentioned twice in the same *sūra*. According to Ṭabarī, the term refers to a fire that breaks everything thrown into it, and he notes that the same name is given to a gluttonous man.¹³⁴
- (4) *Laẓā* (70:15), “furnace, Fierceflame,” “loderndes Feuer.” The term *laẓā*, like *hāwiya* mentioned only once in the Qurʾān, denotes a type of strong fire, carrying the further attribute *nazzāʾa li-l-shawā* (70:15), “eager to roast.”¹³⁵
- (5) *Saqar* (54:48; 74:26–7, 42), “fire (that scorches flesh), raging fire,” “Hitze (der Hölle)”: this term appears four times in the Qurʾān. In lexicography, the roots *s-q-r*

¹³⁰ Other names, for no apparent reason, were left out, for example *al-ḥarīq*. See Qurʾān 3:181, 8:50, 22:9, and 85:10.

¹³¹ Qāḍī, *Daqāʾiq al-akḥbār*, 107; ‘Alā’ al-Dīn ‘Alī b. Muḥammad al-Khāzin al-Baghdādī, *Tafsīr* (Cairo: Ḥasan Ḥilmī al-Kutubī, 1318/1900–1), III, 96–7, from Ibn Jurayj, cited in Asin, *La escatología*, 139. This is the model that Smith and Haddad use, *The Islamic Understanding of Death and Resurrection*, 9, 85. Qurtubī also follows it, but exchanges *laẓā* and *saʿīr*. See his *Tadhkira*, 461. For yet another sequence, see *ibid.*, 465. Thomas O’Shaughnessy, “The Seven Names for Hell in the Qurʾān,” *BSOAS* 24 (1961), 444–69, tries to establish a chronology of revelation for these seven names and comes up with the following sequence: *hāwiya*, *jaḥīm*, *saʿīr*, *jahannam*, *laẓā*, *saqar*, *ḥuṭama*. The story of Bulūqiyā in the *One Thousand and One Nights* has the following order: *jahannam* (for Muslim sinners), *laẓā* (for unbelievers), *jaḥīm* (abode of Gog and Magog), *saʿīr* (for the “people of Iblīs”), *saqar* (for those who missed prayer), *ḥuṭama* (for Jews and Christians), and *hāwiya* (for hypocrites). See Enno Littmann (tr.), *Die Erzählungen aus Tausendundein Nächten* (1923, Wiesbaden: Insel, 1953), III, 794–5. See *ibid.*, 690, for a mnemonic verse.

¹³² *EI2*, s.v. *Ḍjahannam*, II, 381b (L. Gardet). In one tradition it is declared to be a derivative of the Arabic verb *jahama* (“to frown”), “because it makes the faces of men and women frown.” See Qurtubī, *Tadhkira*, 465. Qāḍī, *Daqāʾiq al-akḥbār*, 107, says this is the top layer of hell, the abode of the grave sinners.

¹³³ According to Qāḍī, *Daqāʾiq al-akḥbār*, 107, the Christians are placed here.

¹³⁴ O’Shaughnessy, “The Seven Names for Hell,” 464. Qurtubī relates that this layer of fire is called *ḥuṭama* “because it crushes [*taḥṭimu*] the bones and burns the hearts.” See his *Tadhkira*, 465. Qāḍī, *Daqāʾiq al-akḥbār*, 107, puts the Jews in *ḥuṭama*.

¹³⁵ Qurtubī declares *shawā* (pl. *shuwāt*) to mean the skin on people’s heads, as in the German translation of the verse by Paret (“das einem die Kopfhaut [?] völlig verbrennt”). See Qurtubī, *Tadhkira*, 457. The term *laẓā* is used in the poem attributed to Jalīla bint Surra (fl. sixth c. CE), wife of Kulayb b. Rabīʿa, on the occasion of the so-called war of al-Basūs. The term here has the meaning of “blazing fire [of misfortune],” which afflicts Jalīla from behind and from the front (*laẓā min warāʾi wa-laẓā mustaqbilī*). Qāḍī, *Daqāʾiq al-akḥbār*, 107, places the Magi and Iblīs in this layer.

and *ṣ-q-r* denote the idea of the extreme heat of the sun, but *saqar* may be a foreign word like *jahannam*.¹³⁶

- (6) *Jaḥīm* (2:119; 5:10; passim), “Fire,” “Höllensbrand”: the main term used to express the idea of hell in the early period of revelation (twenty-six times in the Qurʾān), *jaḥīm*, according to O’Shaughnessy, is a syncopated version of the Hebrew *gehinnom*.¹³⁷
- (7) *Hāwīya* (101:9), “the Pit, abyss,” “Zugrunde richten[de].” Mentioned only once in the Qurʾān, the term is notoriously difficult to interpret, “hellpit” perhaps being a secondary meaning.¹³⁸ It is commonly believed to be the lowest level of hell.¹³⁹

However, the seven layers also took on other sets of names that were not borrowed from the Qurʾān, but rather from the Arabic geographical lexicon. Qurtūbī warns against reports in what he calls the “Books of Subtleties” (*kutub al-raqāʾiq*), in which “the names of these levels as well as the names of their inhabitants and their religions are recorded, but according to an order that has not come down to us in authentic traditions.”¹⁴⁰ Perhaps what he had in mind were models like that mentioned by Thaʿlabī (d. 427/1035) in his “Legends of the Prophets” (*Qiṣaṣ al-anbiyāʾ*). Thaʿlabī speaks of the seven earths and the seven layers of hell synonymously as (1) *adīm* (“surface”), a notion somewhat reminiscent of the idea referred to above, namely that the inhabited world was the first of the seven earths, or that the sea was the top layer of hell. Then follow (2) *basīṭ* (“plane,” another term current in geographical parlance), (3) *thaqīl* (“onerous, heavy, painful”), (4) *baṭīḥ* (“swamp”), (5) *mutathāqila* (? “oppressor, sluggish”), (6) *māsika* (“the holder”), and finally (7) *tharā/ṭarā* (“humid”), a diffuse term indicating something like pebbles, dust, or moist scum, which fits in with the “swamp” of layer four and the notion that one of the underworld’s characteristic features is moisture.¹⁴¹

¹³⁶ *EI2*, s.v. *Saqar*, VIII, 881a (D. Gimaret). Ṭabarī, in his commentary on *sūra* 54:48, also mentions that *saqar* is one of the “gates” of hell. See *ibid.* In *saqar*, again according to Qāḍī, *Daqāʾiq al-akḥbār*, 107, the Sabaeans dwell.

¹³⁷ O’Shaughnessy, “The Seven Names for Hell,” 459–60. *Jaḥīm* is one of many examples of the Qurʾān’s liking for sonorous endings. As O’Shaughnessy writes, “he [Muḥammad] seemed particularly attracted by the termination *īm* and its rhyming [in Arabic verse] counterpart *in*.” See “The Seven Names for Hell,” 453. The *fāʿīl* and *fāʿūl* forms, with their characteristic long second vowel, often express intensity and, in the case of *fāʿīl*, also sound. See William Wright, *A Grammar of the Arabic Language* (Cambridge: Cambridge University Press, 1999), I, 113. The topography of hell has a plethora of such names – *ṣaʿūd*, *yahmūm*, *samūm*, *zaqqūm*, *jaḥīm*, *ghislīn*, *sijjīn* – for all of which see below, and cf. *tasnīm* (Qurʾān 83:27), a fountain in paradise. Cf. also the rather insensitive comment by Theodor Nöldecke, *Orientalische Skizzen* (1892, repr. Hildesheim: Olms, 1974), 41: “The man with little education, especially, rejoices in strange expressions, and these expressions easily impress on the uncouth a sense of solemnity and mystery. Muhammad strove to make such an impression; this is why he coined and used a number of quaint words himself, such as *ghislīn* (69:26), *sijjīn* (83:7–8), *tasnīm* (83:27), *salsabīl* (76:18).” Qāḍī, *Daqāʾiq al-akḥbār*, 107, says that *jaḥīm* is for the polytheists (*mushrikūn*).

¹³⁸ See the literature mentioned in Paret, *Kommentar*, 518–19.

¹³⁹ Qurtūbī, *Tadhkira*, 461. According to Qāḍī, *Daqāʾiq al-akḥbār*, 107, in *hāwīya* dwell the “hypocrites and those who rejected the Truth.”

¹⁴⁰ Qurtūbī, *Tadhkira*, 461.

¹⁴¹ Thaʿlabī, *Qiṣaṣ al-anbiyāʾ*, 6–7. For *ṭarā*, see Abū ʿAbd al-Rahmān al-Farūhidī al-Khāfī b. Aḥmad K. *al-ʿAyn* ([Baghdad]: Wizārat al-Thaqāfa wa-l-ʿIlm, 1980–5), VII, 445; Ibn

Hell's top layer was sometimes conceived as a purgatory, that is, as a realm in which the grave sinners are purged from their faults. On rare occasions, the sevenfold structure of hell is resolved into a simple distinction between high and low layers. According to one, seemingly late tradition, hell has two main layers (*bābān*): an inner one (*al-jawāniyya*), from which nobody ever comes out, and an outer one (*al-barrāniyya*), in which believing sinners are punished for a limited time.¹⁴² All in all, however, the notion that purgatory was a qualitatively different place than the rest of hell had little currency in medieval Islam. The distinction between punishment in the upper and the lower hells is not very pronounced in the eschatological manuals. Purgatory never crystallized into a "third place" between paradise and hell, as it did in the Christian tradition.¹⁴³ At the same time, one must take care not to confound the Muslim purgatory with *limbo*, a place which did indeed exist. This *limbo* is most commonly identified with the "elevated places [*a'rāf*]" mentioned in Qur'an 7:46, from which both paradise and hell can be seen, a residual place between hell and paradise in which there is neither punishment nor reward. Here are kept, for example, those who died as children without virtue or sin.¹⁴⁴ However, as for the "purgatory" first layer of hell, this was often called "hell" (*jahannam*) *tout court*, and it was not a place outside or above the Fire, but very much a part of it.¹⁴⁵

Manzūr, *Lisān al-'arab*, XV, 6. In this context, one could also mention the conceptions of hell as a megaanthropos, equating each of the seven layers of hell with the seven body parts with which man sins: eyes, ears, tongue, hands, stomach, private parts, and feet. See Ghazālī, *Iḥyā'*, IV, 668, who only touches on the equation; Asin, *La escatología*, 145, referring to Ibn 'Arabī. ¹⁴² Muttaqī, *Kanz al-'ummāl*, XIV, 216. The tradition, however, is perhaps late, since I cannot find it in any of the earlier collections.

¹⁴³ The idea of a lower and an upper hell, like many other eschatological notions in Islam, has precursors in ancient Mediterranean traditions, including Jewish and Christian ones. The Apocalypse of Paul, the vision of the hereafter that had perhaps the greatest influence on medieval Christianity, also distinguished between an upper and a lower hell, an idea that later developed into the Catholic doctrine of purgatory, a "third place" between heaven and hell. See LeGoff, *The Birth of Purgatory*, 35. Cf. Himmelfarb, *Tours of Hell*, 16–18. Himmelfarb's study refers to a number of similarities between late antique visions of hell and the Islamic material presented here (see pp. 10–11, 13–14, 17, 20, 29, 30, 35, and *passim*), but the genealogy of these eschatological traditions is beyond the scope of this study. As for the image of hell in the Qur'an, see *EQ*, s.v. Eschatology, II, 50a (J. I. Smith): "On the whole . . . the picture afforded by the Qur'an is uniquely its own."

¹⁴⁴ Ghazālī, *Iḥyā'*, IV, 31. Cf. Smith and Haddad, *The Islamic Understanding of Death and Resurrection*, 90–1; Asin, *La escatología*, 129–33, 180.

¹⁴⁵ This poses the question of whether reasons can be found why in Islam the upper hell did not undergo the same transformation toward purgatory as a third place as in Christianity. Purgatory in medieval Christendom, as LeGoff has argued, was in a sense a luxury idea, a concept that could be born only in a society where people were not constantly "caught between hell and paradise," viz., where they were not incessantly struggling just to survive. It took a rising urban class invested with autonomous political power for the concept of purgatory to develop. See LeGoff, *The Birth of Purgatory*, 13. One of the implications of LeGoff's work is that the hereafter was created as the mirror of this world; in fact it is human society reimagined, with switched polarities at times – the poor and downtrodden rise to paradise, while the powerful are humbled in hell – but using this-worldly divisions and markers of social stratification. In medieval Islamic societies such as that of the Saljuqs, an

Hell's size, smells, colors, and meteorological properties

Let us begin our descent into hell with some more notes on its general features. Descriptions of the size of hell seek to push the limits of human imagination, without, however, using the concept of infinity. For example, the diameter of the vast funnel of hell is bridged by the Bridge (*ṣirāṭ*), over which all mankind passes on the Day of Judgment on its way to paradise.¹⁴⁶ A stone thrown from the *ṣirāṭ* into hell falls seventy years before reaching the bottom.¹⁴⁷ Between each pair of gates (or layers) one has to travel five hundred years.¹⁴⁸ Each gate (or layer) has 70,000 mountains, each of which has 70,000 ravines, through each of which run 70,000 river-beds, in each of which there are 70,000 castles with 70,000 rooms. In each room there are 70,000 jugs of poison whose lids, when taken off, let out giant clouds of smoke, the Qur'ānic *surādiq* (18:29).¹⁴⁹

Along with size, we hear about hell's smells, colors, and meteorological properties. Within this gigantic subterranean structure, poisonous winds blow, especially the wind called *samūm* (Qur'an 15:27), which is defined by the lexicographers as the kind of wind that generates lightning¹⁵⁰ and is exceedingly hot and stifling.¹⁵¹ It is a black wind, like the hurricane sent against the treacherous people of 'Ād (Qur'an 69:6–7).¹⁵² A terrible stench, "like lavatories [*ka-l-marāḥīd*]," is intermixed with this violent wind.¹⁵³ The scenery in general is pitch-black, for the infernal heat has turned the color of

urban middle class that could flourish between princely reward and princely punishment was slow to develop. As we have seen in part I of this study, the military ruling élite imposed a punitive system that left little room for a middle class of people who could install themselves lastingly between the two extremes of reward and punishment, or move from the lower realm into the higher. Following LeGoff's lead, one may submit that the idea of purgatory in Islam was therefore of little conceptual autonomy. It continuously oscillated over into broader conceptions of hell. Whatever the value of LeGoff's work, it pointedly raises the question of to what extent beliefs about the structure of the hereafter reflect actual concerns of human life in *this* world.

¹⁴⁶ The *ṣirāṭ* is long and wide enough to hold all of mankind at the same time. See Ibn Ḥibbān, *Ṣaḥīḥ*, XVI, 384; Nasā'ī, *Sunan*, VI, 406, 447; Tirmidhī, *Sunan* (ed. Shākir), V, 372; Ibn Ḥanbal, *Musnad*, VI, 116; Qurtubī, *Tadhkira*, 472. Those who are saved pass safely over it while those who are condemned to punishment fall into the funnel: Bukhārī, *Ṣaḥīḥ*, V, 2403; Muslim, *Ṣaḥīḥ*, I, 177.

¹⁴⁷ San'ānī, *Muṣannaf*, XI, 422; Qurtubī, *Tadhkira*, 357, 479; Muttaqī, *Kanz al-'ummāl*, XVI, 221. In Tirmidhī, *Sunan*, IV, 709, stones fall for forty years.

¹⁴⁸ Qurtubī, *Tadhkira*, 465.

¹⁴⁹ *Ibid.*, 466. These clouds, whose thickness is equal to the "the distance one covers when traveling forty years," go on to form the walls surrounding hell: Ibn Ḥanbal, *Musnad*, III, 29; al-Ḥakīm al-Nisābūrī, *Mustadrak*, IV, 643; Tirmidhī, *Sunan*, IV, 706; Qurtubī, *Tadhkira*, 472.

¹⁵⁰ Abū Bakr Muḥammad b. 'Uzayr al-Sijistānī, *Gharīb al-Qur'ān* (Beirut: Dār Qutayba, 1416/1995), I, 464–5.

¹⁵¹ Ibn Manzūr, *Lisān al-'Arab*, II, 623. Cf. O'Shaughnessy, "The Seven Names for Hell," 445.

¹⁵² Badr al-Dīn Maḥmūd b. Aḥmad al-'Aynī, *Umdat al-qārī fī sharḥ Ṣaḥīḥ al-Bukhārī* (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, n.d.), XIX, 259; Asín, *La escatología*, 150. The *riḥ ṣarṣar* of Qur'an 69:6, however, is not a hot wind, but a winter wind. Cf. Paret, *Der Koran: Übersetzung* (1966, Stuttgart: Kohlhammer, 1993), 479.

¹⁵³ Ibn al-Jawzī, *Dhamm al-hawā*, 202.

hell from a blazing red to ashen white to the color of black coal.¹⁵⁴ It is a “blackness mixed with God’s wrath,”¹⁵⁵ and even the flames of fire cannot illuminate the ghastly lands.¹⁵⁶ In this darkness, rain pours down. “They will be showered [*yughāthū*] with water like molten lead which burns the faces,” says the Qur’ān (18:29), and exegetical *ḥadīths* claim this is actual rain of boiling water,¹⁵⁷ or rain of rocks of fire, falling on the heads of the inhabitants of hell.¹⁵⁸ The temperature in hell, not surprisingly, is extremely hot, but in Ibn al-‘Arabī’s vision of hell there is also freezing cold (*zamharīr*) on the bottom layer,¹⁵⁹ an idea that is also found in earlier traditions.¹⁶⁰

Geographical characteristics of hell

The geography of hell is barren, but nevertheless mountains, valleys, rivers, wells, and other geological elements shape the landscape. The reports specifying these features of hell’s geography mostly take their clues from the Qur’ān. Thus, the term *ṣa‘ūd* in Qur’ān 74:17 “I shall impose on him a painful *ṣa‘ūd*,” which to the early audience of the revelation probably meant simply a “painful ascent,” is reported by Ṭabarī to be a mountain in hell.¹⁶¹ Various *ḥadīths* tell us that *ṣa‘ūd* is a mountain of fire which the unbelievers climb for seventy years, “then they fall down from it in the same way, unto eternity.”¹⁶²

¹⁵⁴ Tirmidhī, *Sunan*, IV, 710; Ghazālī, *Iḥyā’*, IV, 531; Qāḍī, *Daqā’iq al-akḥbār*, 62–3; Muttaqī, *Kanz al-‘ummāl*, XIV, 220, 222, 277. For the dichotomy darkness/light in hell and paradise in later Islamic eschatology, see MacDonald, “Paradise,” 334.

¹⁵⁵ Qurṭubī, *Tadhkira*, 466.

¹⁵⁶ Aḥmad b. ‘Abd Allāh Abū Nu‘aym al-Iṣfahānī, *Ḥilyat al-awliyā’ wa-ṭabaqāt al-asfiyā’* (Beirut: Dār al-Kitāb al-‘Arabī, 1405/[1984–5]), VI, 139; Ibn ‘Asākir, *Tārīkh madīnat Dimashq*, XXXV, 217; Qurṭubī, *Tadhkira*, 476.

¹⁵⁷ Asin, *La escatología*, 152.

¹⁵⁸ Qāḍī, *Daqā’iq al-akḥbār*, 68. Iron chains (*aḡlāl*) also rain down (*tumṭiru*) on the inhabitants of hell. See Qurṭubī, *Tadhkira*, 481; Tha‘labī, *Tafsīr*, VIII, 282; Abū l-Fidā’ Ismā‘īl b. ‘Umar Ibn Kathīr, *Tafsīr* (Beirut: Dār al-Fikr, 1401/[1980–1]), IV, 89; Suyūṭī, *al-Durr al-manthūr* (Beirut: Dār al-Fikr, 1983), VII, 306.

¹⁵⁹ Asin, *La escatología*, 166.

¹⁶⁰ In a popular *isrā’* account, there are mountains of ice surrounded by seas of fire. See Suyūṭī, *al-La‘ālī al-maṣnū‘a*, I, 67. Ṭabarī mentions that the term *ghassāq*, a substance which in Qur’ān 38:57 is threatened to be given to the transgressors (*al-ṭāghīn*) against God, means “unbearable cold” according to some. See Ṭabarī, *Jāmī‘ al-bayān*, XXIII, 177; also Samarqandī, *Tafsīr*, III, 164. A well-known tradition has it that the extreme heat in summer and the extreme cold in winter are the two breaths of hell that God granted it to relieve itself. See Muslim, *Ṣaḥīḥ*, I, 432; Nasā‘ī, *Sunan*, VI, 504; Ibn Ḥanbal, *Musnad*, II, 276; Ghazālī, *Iḥyā’*, IV, 531. Cf. Muḥyī al-Dīn Abū Zakariyyā b. Sharaf al-Dīn al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1392/[1972–3]), V, 120, who urges the reader not to understand this tradition figuratively.

¹⁶¹ Ṭabarī, *Jāmī‘ al-bayān*, XXIX, 155. Cf. O’Shaughnessy, “The Seven Names for Hell,” 445.

¹⁶² Ibn Ḥanbal, *Musnad*, III, 75; al-Ḥākim al-Nisābūrī, *Mustadrak*, IV, 639; ‘Abd Allāh Ibn al-Mubārak, *Musnad* (Riyadh: Maktabat al-Ma‘ārif, 1407/[1986–7]), I, 80; Qurṭubī, *Tadhkira*, 484; there is a slightly dissimilar version in Qāḍī, *Daqā’iq al-akḥbār*, 68. The *ṣa‘ūd* mountain is so hot that it melts the hands of the inhabitants of hell. See Qurṭubī, *Tadhkira*, 489–90. It is located on the bottom layer of *al-hāwīya*, and on it “the enemies of God are put face down, their hands fettered to their necks, their necks bound up to their feet.” See *ibid.*, 466.

A similar development toward the concrete happened with the “shadow of black smoke [*zill min yaḥmūm*]” mentioned in Qurʾān 56:42.¹⁶³ Some commentators argued that *yaḥmūm* was a mountain.¹⁶⁴ Based on the Qurʾānic pericope “he has not attempted the ascent [*lā iqtahama al-ʿaqaba*]” (90:11), *al-ʿaqaba* was held to be another of the mountains in hell,¹⁶⁵ with seventy levels, while others believed that *al-ʿaqaba* was merely an extremely difficult road, or even another term for the bridge leading into paradise.¹⁶⁶

In between these black mountains of smoke and of fire, vast valleys open up. “In hell lie 70,000 valleys, each of which has 70,000 ravines, in each of which are 70,000 serpents and 70,000 scorpions.”¹⁶⁷ Again the Qurʾān gave a lead: “We made between them a *mawbiq*” (18:52). Literally a “place of destruction,” in the Muslim *imaginaire*, the *mawbiq* becomes a deep gorge in hell that lies between mountains.¹⁶⁸ *Al-wayl* (“disgrace”) is described either as the most profound valley of hell in which the pus of the damned is collected, to give as a drink to the polytheists; as a very deep valley, into which people fall for forty years; as a riverbed at the bottom of Hell (*fī aṣl jahannam*); as a cistern (*ṣahrīj*) filled with the pus of the inhabitants of the Fire; or, finally, as one of the gates of the Fire.¹⁶⁹ *Lamlam* is a valley whose heat is so intense that the other valleys ask God to deliver them from it.¹⁷⁰ It is circular, and houses snakes the size of the neck of a camel, biting those who did not pray.¹⁷¹

Next to huge mountains and abysmal valleys, somewhat smaller minerals, rocks, and simple stones also form the landscape of hell. The *sijjīn* from Qurʾān 83:7 was interpreted as “a huge stone to which immoral spirits are

¹⁶³ See *EQ*, s.v. Smoke, V, 65a–b (H. Toelle).

¹⁶⁴ Thaʿlabī, *Tafsīr*, IX, 213; Samʿānī, *Tafsīr*, V, 352. As Qurṭubī relates, “the *yaḥmūm* is a mountain in hell in whose shadow the inhabitants of the fire seek succour, but it is ‘neither cool nor refreshing’ (Qurʾān 56:44), because it is made of the smoke from the edge of hell.” One of the early seven jurists of Medina, Saʿīd al-Musayyab (d. 94/712 or 105/723), is quoted as adding: “It is not beautiful to look at.” See Qurṭubī, *Tadhkira*, 485. On Saʿīd b. al-Musayyab, see Muḥammad Ibn Saʿd, *al-Ṭabaqāt al-kubrā* (Beirut: Dār Ṣādir, 1957–68), II, 379; Abū Ishāq Ibrāhīm b. ʿAlī b. Yūsuf al-Shīrāzī al-Fīrūzābādī, *Ṭabaqāt al-fuqahāʾ* (Beirut: Dār al-Rāʾid al-ʿArabi, 1401/[1981]), 58. Cf. Harald Motzki, “The Role of Non-Arab Converts in Early Islamic Law,” *ILS* 6, 3 (1999), 300.

¹⁶⁵ Ṭabarī, *Jāmiʿ al-bayān* (ed. Beirut), XXX, 201; Thaʿlabī, *Tafsīr*, X, 210; Samʿānī, *Tafsīr*, VI, 229.

¹⁶⁶ Qurṭubī, *Tadhkira*, 489.

¹⁶⁷ Aḥmad b. al-Ḥusayn al-Bayhaqī, *K. al-Baʿth wa-l-nushūr* (Beirut: Markaz al-Khidmāt wa-l-Abḥāth al-Thaqāfiyya, 1406/1986), 275; Ghazālī, *Iḥyāʾ*, IV, 530–1.

¹⁶⁸ Ṭabarī, *Jāmiʿ al-bayān* (ed. Beirut), XV, 264; Ibn al-Jawzī, *Zād al-masīr*, V, 156; Qurṭubī, *Tadhkira*, 485; Asín, *La escatología*, 140. The *mawbiq* is also identified as a riverbed filled with pus (*qayḥ*) and blood. See Qurṭubī, *Tadhkira*, 485.

¹⁶⁹ Daylamī, *Firdaws al-akḥbār* (ed. Zaghlūl), IV, 401; Qurṭubī, *Tadhkira*, 484–5.

¹⁷⁰ Ibn al-Mubārak, *Musnad*, I, 79; Muttaqī, *Kanz al-ummāl*, XIV, 222; Abū Nuʿaym, *Ḥilyat al-awliyyāʾ*, VIII, 178.

¹⁷¹ Qurṭubī, *Tadhkira*, 486. Other valleys include: (1) *āthām* (“crimes, sins”) in which there are scorpions “as well fed as mules.” See Qurṭubī, *Tadhkira*, 486; Samarqandī, *Qurraṭ al-ʿuyūn wa-mufrīḥ al-qalb al-maḥzun* (Damascus: Dār al-Kitāb al-ʿArabi, n.d.), 13. See also Suyūṭī, *al-Durr al-manthūr*, VI, 277. In addition, one should mention (2) *al-khabāl* (“ruin”) and (3) *al-ḥuzn* (“sadness”), for which see Asín, *La escatología*, 140.

brought.¹⁷² Stones abound in the Islamic hell for, as the Qurʾān tells us, “its fuel is of men and stones” (2:23, 66:6). Ibn Masʿūd was of the opinion that the stones in hell were brimstones, because brimstone is especially suitable for punishment: it is easily inflammable, has a putrid stench, develops a lot of smoke, sticks to bodies, and can be very hot.¹⁷³ Other unpleasant minerals cover the ground in hell. As reported above, the bottom of hell consists of moist scum or pebbles (*tarā*). Swollen cadavers with foul smells also lie around scattered,¹⁷⁴ next to hooks which resemble the thorns of the *saʿdān* bush, a desert shrub.¹⁷⁵ According to another tradition, hell’s floor consists of “copper, lead, and glass.”¹⁷⁶

The primary characteristic of hell may be its burning heat and scorching dryness. However, it appears that for the eschatologists the urge to think about the hereafter in terms analogical to this world was so strong that large bodies of fluids such as seas, rivers, wells, and cisterns were also incorporated into the dismal picture. These bodies, however, were filled neither with water to relieve the sufferers nor with any other even remotely pleasant substance, but, rather, their opposite: with blood, fire, and pus.¹⁷⁷ There is a stinking black ocean in hell,¹⁷⁸ and further inland, in the fourth layer of hell, there flows a river of boiling sulphur.¹⁷⁹ Other rivers and trenches are filled with blood.¹⁸⁰ The Qurʾān says that the unbelievers “will meet deception [*fa-sawfa yalqawna ghayyan*]” (19:59), and by now one will not be surprised to learn that the abstract noun “deception” (*ghayy*) was taken to refer to a river at the bottom of hell, or to a *wādī* in which flows pus and blood.¹⁸¹

¹⁷² Ghazālī, *al-Durra al-fākhira*, 18; Thaʿlabī, *Qīṣaṣ al-anbiyāʾ*, 6–7.

¹⁷³ Qurṭubī, *Tadhkira*, 492.

¹⁷⁴ Asin, *La escatologia*, 426 (quoting Muttaqī, *Kanz al-ʿummāl*).

¹⁷⁵ Bukhārī, *Ṣaḥīḥ*, I, 278, V, 2403; Muslim, *Ṣaḥīḥ*, I, 165; Ibn Ḥibbān, *Ṣaḥīḥ*, XVI, 450; Nasāʾī, *Sunan*, VI, 457; Ghazālī, *Ihyāʾ*, IV, 524.

¹⁷⁶ Qurṭubī, *Tadhkira*, 466.

¹⁷⁷ Tabarī, *Jamīʾ al-bayān* (ed. Beirut), XV, 264; Ibn al-Jawzī, *Zād al-masīr*, V, 156; Qurṭubī, *Tadhkira*, 485; Asin, *La escatologia*, 140.

¹⁷⁸ Qurṭubī, *Tadhkira*, 486; Suyūṭī, *al-Laʿālī al-maṣnūʿa*, I, 66. In this ocean, people are adrift helplessly, desperately trying to reach the shores on which cities of fire are built and where vermin, snakes, and scorpions are waiting for them. See Qurṭubī, *Tadhkira*, 489.

¹⁷⁹ Asin, *La escatologia*, 139. The idea of a river of fire in the underworld, the Pyriphlegethon, was current in ancient mythology. See William D. Furley, “Feuer,” in Hans Dieter Betz et al. (eds.), *Religion in Geschichte und Gegenwart* (4th rev. ed., Tübingen: Mohr, 2000), III, 106a. A river of fire streams out from God’s throne in Daniel 7:10.

¹⁸⁰ Bukhārī, *Ṣaḥīḥ*, I, 466, II, 734; Bayhaqī, *al-Sunan al-kubrā*, V, 275; Ibn Ḥanbal, *Musnad*, V, 14; Muttaqī, *Kanz al-ʿummāl*, XVI, 279, XV, 164. The *khandaq al-sukrān* (“trench of the drunkards”) is the abode of those who died in a state of drunkenness. See Daylamī, *Firdaws al-akhbār* (ed. Zaghlūl), III, 508; Qurṭubī, *Tadhkira*, 484. Cf. Asin, *La escatologia*, 140.

¹⁸¹ Sufyān b. Saʿīd al-Thawrī, *Tafsīr* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1403/[1982–3]), I, 187; Samarqandī, *Tafsīr*, II, 380; Tabarī, *Jamīʾ al-bayān* (ed. Beirut), XVI, 100; Thaʿlabī, *Tafsīr*, VI, 221; Zamaksharī, *al-Kashshaf ʿan ḥaqāʾiq al-tanzīl* (Beirut: Dār Ihyāʾ al-Turāth al-ʿArabī, n.d.), III, 28; Qurṭubī, *Tadhkira*, 485–6.; Suyūṭī, *al-Durr al-manthūr*, VI, 276.

Ghassāq (“infection, inflammation”) is a spring (‘*ayn*),¹⁸² and one can find wells (*bīr*) in hell, too.¹⁸³

Hell's flora

As in all desert-like places, there is little vegetation in hell. Only thorns cover the floors and gates,¹⁸⁴ and in hell grow dry and thorny shrubs, the *ḍarī* and *ghislīn*.¹⁸⁵ However, there is one tree that is described in some detail. This is the tree of *zaqqūm*. The Qurʾān refers to this remarkable plant in 37:62–8, where it is described as a tree at the bottom of hell (*fī aṣli l-jahīm*)¹⁸⁶ whose crop (*ṭalʿuhā*) is “like the heads of demons [*ka-ruʿūs al-shayāʿīn*].” The inhabitants of hell are forced to eat from it, whereupon they are returned to hellfire. According to Qurʾān 44:43–6, *zaqqūm* is the food of the sinner, “like molten brass, it seethes in their bellies.” *Zaqqūm* is usually identified with the “cursed tree [*al-shajara al-malʿūna*] mentioned in *sūra* 17:60.¹⁸⁷ Eschatological *ḥadīths* further elaborate on *zaqqūm*’s characteristics. It is extremely poisonous, as is

¹⁸² In it is collected the febrile sweat of snakes and scorpions which burns the flesh of the damned to their bones. See Ṭabarī, *Jamīʿ al-bayān* (ed. Beirut), XXIII, 177.

¹⁸³ *Al-mansā* is a well that serves as a dwelling for the drunkards. See Qurṭubī, *Tadhkira*, 487. Daylamī, *Firdaws al-akhbār* (ed. Zaghlūl), II, 88, cites a tradition that also speaks of a pit on the bottom of hell reserved for drunkards. On the lowest level of the Fire there is a well from which, if it is opened, flows “punishment from God which surpasses all measure.” See Qurṭubī, *Tadhkira*, 461. From the *bīr al-habhab* (“well of the mirage”) comes out “a fire against which the Fire implores God to protect it.” See *ibid.*, 466. The well is spelled with a short “a” (*habhab*) in most traditions: al-Ḥākīm al-Nisābūrī, *Mustadrak*, IV, 639; Abū l-Qāsim Sulaymān b. Aḥmad al-Ṭabarānī, *al-Muʿjam al-awṣat* (Cairo: Dār al-Haramayn, 1415/[1994]), IV, 37; Nūr al-Dīn ‘Alī b. Abī Bakr al-Haythamī (d. 807/1405), *Majmaʿ al-zawāʿid wa-manbaʿ al-fawāʿid* (Beirut: Dār al-Kitāb al-ʿArabī, 1407/[1986–7]), V, 197, X, 393; Muttaqī, *Kanz al-ummāl*, III, 202–3. There is also a “cistern of affliction [*jubb al-ḥuzn*],” for which see Qurṭubī, *Tadhkira*, 465. Cf. *ibid.*, 488. For the *jubb al-ḥuzn*, see also the tradition in Ṭabarānī, *al-Muʿjam al-awṣat*, III, 261, which locates it at the bottom of hell. The *jubb al-ḥuzn* is in fact more commonly regarded a *wādī* on the bottom of *jahannam*. See Ibn Māja, *Sunan*, I, 94; Tirmidhī, *Sunan*, IV, 593; Muttaqī, *Kanz al-ummāl*, III, 190, 193, X, 121.

¹⁸⁴ Qurṭubī, *Tadhkira*, 466.

¹⁸⁵ Samarqandī, *Tafsīr*, III, 552, explains that *ḍarī* is a plant that grows between Mecca and Yemen, which is eaten, as long as it is young and soft (when it is still called *shabraḡ*), by camels. However, when it becomes dry, it is like nails, so that it sticks in the throats of the inhabitants of hell who are forced to eat it. Ṭabarī, *Jamīʿ al-bayān* (ed. Beirut), XXX, 160, says the *ḍarī* is a poisonous plant. Samʿānī, *Tafsīr*, VI, 216, says that *ghislīn* is the same as *ḍarī*, but Qurṭubī, *Aḥkām al-Qurʾān* (Cairo: Dār al-Shaʿb, n.d.), XX, 31, denies this. Ibn al-Jawzī, *Zād al-masīr*, IX, 96–7, gives no fewer than six different explanations for *ḍarī*.

¹⁸⁶ This is despite the fact that a tradition in Samʿānī, *Tafsīr*, IV, 402, and in Qurṭubī, *Aḥkām al-Qurʾān*, XV, 85, places it in the sixth layer of hell. Ibn al-Humām, *Fath al-qadīr*, I, 106, says that the *zaqqūm* tree is located in *saḡar*, the fifth layer of hell, “according to most.”

¹⁸⁷ Samʿānī, *Tafsīr* (Riyadh: Maktabat al-Rushd, 1410/[1989–90]), II, 381; Ṭabarī, *Jamīʿ al-bayān* (ed. Beirut), XV, 113–15; Bukhārī, *Ṣaḥīḥ*, III, 1412, IV, 1748; Samʿānī, *Tafsīr*, III, 254; Qurṭubī, *Aḥkām al-Qurʾān*, X, 282. The *zaqqūm* tree mirrors the lotus tree in the seventh heaven (*sidrat al-muntahā*), whose leaves are like the ears of elephants and whose fruit is like pebbles (*qalāl*) or precious stones. See Muttaqī, *Kanz al-ummāl*, XI, 175, 177: “al-qalla al-ḥabb al-ʿazīm . . . wa-l-jamʿ qalāl wa-hiya maʿrūfa bi-l-*Ḥijāz*”; Ṭabarī, *Tahdhīb al-āthār*, I, 421, 424. For a passage that mirrors the heavenly lotus tree against the *zaqqūm* tree in hell, see Muttaqī, *Kanz al-ummāl*, VI, 169.

related from the Prophet Muḥammad himself: “If a drop from *zaqqūm* were to fall into this world, the sustenance of its people would be destroyed.”¹⁸⁸ When the inhabitants of hell eat from it, it snaps back at them.¹⁸⁹ It feeds on fire, not on water like other trees,¹⁹⁰ and its branches reach all layers of hell.¹⁹¹

The “heads of demons” caused some embarrassment to the commentators. In popular depictions of the *zaqqūm* tree the Qur’anic description is taken rather literally. In a *mīrāj* account, the Prophet sees on the *zaqqūm* tree “the like of demon heads, and in them were black worms, and each worm was a hundred cubits [*dhirā’*] long, and men were forced to eat them.”¹⁹² The Paris manuscript, written in Uīghur, of the Prophet’s night journey has a depiction of the *zaqqūm* tree that shows the heads of demons and wild animals growing forth from its branches. The commentators either understood the expression figuratively, or claimed that the demons referred to a particular kind of snake current in Arabia, or they argued that “head of demons” was the name of a plant in Yemen.¹⁹³ In fact, there was debate as to whether *zaqqūm* is a plant that could be found on earth. Some emphatically stated that it is *not* like the date-palm (and therefore exclusively an other-worldly phenomenon).¹⁹⁴ Others claimed it is a disgustingly bitter tree growing in Tihāma/Yemen.¹⁹⁵ Tha’labī concurred with the latter view, saying that the most well-known answer to this question is that the “head of demons” is a desert tree known to the Arabs.¹⁹⁶ The debate about the nature of *zaqqūm* illustrates again the close conceptual contiguity of this world and the next in the medieval Islamic imagination.

The architecture of hell

From these “natural” phenomena let us turn to the material culture of hell: its buildings and other architectural elements. Eschatologists had no problem

¹⁸⁸ Ibn Abī Shayba, *Muṣannaf*, VII, 52; Ibn Ḥanbal, *Musnad*, I, 300, 338; Ṭabarī, *Jāmi’ al-bayān* (ed. Beirut), XXIII, 111, XXV, 131; al-Ḥākim al-Nisābūrī, *Mustadrak*, II, 490; Nasā’ī, *Sunan*, VI, 313, 380–1; Tirmidhī, *Sunan*, IV, 706; Suyūṭī, *al-Durr al-manthūr*, VII, 96. Cf. Qāḍī, *Daqā’iq al-akhbār*, 69.

¹⁸⁹ Abū Nu’aym, *Hilyat al-awliyā’*, II, 314. ¹⁹⁰ Qurtubī, *Aḥkām al-Qur’ān*, XV, 85.

¹⁹¹ Tha’labī, *Tafsīr*, VIII, 145; Muḥammad b. al-Ḥusayn b. Mas’ūd al-Baghawī, *Ma’ālim al-tanzīl* (Beirut: Dār al-Mamlaka al-’Ilmiyya, 1415/1995), V, 239; Abū l-Faḍl Rashīd al-Dīn al-Maybudī, *Kashf al-asrār wa-’iddat al-abrār* (Tehran: Intishārāt-i Dānishgāh, 1339sh./[1960]), VIII, 275.

¹⁹² Abū Nu’aym, *Hilyat al-awliyā’*, VI, 11.

¹⁹³ Ṭabarī, *Jāmi’ al-bayān* (ed. Beirut), XXIII, 64; Qurtubī, *Aḥkām al-Qur’ān*, XV, 85–6; Ibn al-Jawzī, *Zād al-masīr*, VII, 62.

¹⁹⁴ Samarqandī, *Tafsīr*, III, 135.

¹⁹⁵ Sam’ānī, *Tafsīr*, IV, 401; Qurtubī, *Aḥkām al-Qur’ān*, XV, 85. Lane, *An Arabic–English Lexicon*, 1239a–b, also reports from the lexicographers that *zaqqūm* is a medically beneficial plant that grows in the Jordan valley around Jericho, or a foodstuff of the Arabs, composed of fresh butter with dates. See *EI2*, s.v. *Zaqqūm*, XI, 425b (C. E. Bosworth).

¹⁹⁶ Tha’labī, *Tafsīr*, VIII, 146. This is also the meaning that Badī’ al-Zamām al-Hamadhānī (d. 398/1008) uses in his forty-fourth *maqāma*. See his *Maqāmāt* (translated by Gernot Rotter; Tübingen: Erdmann, 1982), 190.

imagining buildings in hell since a Prophetic tradition threatened those who slandered the Prophet with a “house in hell [*baytun fi jahannam*].”¹⁹⁷ A tradition going back to the third/ninth century speaks of a “terrifying house, with black walls, the floor covered with ashes.”¹⁹⁸ The Prophet, during his descent into hell, was reported to have seen not only houses, but whole cities on the shores of the ocean in hell, comprising up to 70,000 buildings.¹⁹⁹ Sodom and Gomorrah are rebuilt in hell, to serve as places of punishment for sodomites.²⁰⁰ On the sixth level of hell there are, according to a tradition, three hundred castles, “each castle has three hundred rooms [*bayt*], in each room there are three hundred different kinds of punishments.”²⁰¹ Again, clues were taken from the Qurʾān. For example, starting from the pericope “who-soever incurs My wrath will fall [*hawā*]” (20:81), *hawā* became the name of a specific fortress in hell.²⁰² The Qurʾānic Pharaoh (*farʿūn*) likewise lent his name to a mansion in hell, in which, appropriately, tyrants are punished.²⁰³ Other dwellings of the inhabitants of the Fire include prisons,²⁰⁴ furnaces, and ovens (*tanānīr*), as well as coffins.²⁰⁵ Gibbets of fire are erected on which people are strung up.²⁰⁶

From the foregoing, it has become sufficiently clear that both the topography and the architecture of hell are to a large extent modeled after the realities of *this* world. In itself, this may not be particularly surprising. However, the degree to which these structural similarities are fleshed out in the eschatological narrative is nevertheless noteworthy. Muslim commentators had an inkling of this. At times they wrote against the geomorphization of hell. One instance of this is the debate whether the *zaqqūm* tree was “of this

¹⁹⁷ Abū l-Qāsim Sulaymān b. Aḥmad al-Ṭabarānī, *al-Muʿjam al-kabīr* (Mosul: Maktabat al-Zahrāʾ, 1404/1983), III, 18; Haythamī, *Majmaʿ al-zawāʾid*, I, 148; Ibn al-Jawzī, *k. al-Mawḍūʿāt* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1415/1995), I, 51. A tradition from ʿAlī b. Abī Ṭālib promises a “house in hell” to Ḥātim al-Ṭāʿī. See Daylamī, *Firdaws al-akḥbār* (ed. Zaghūl), II, 313.

¹⁹⁸ Suyūṭī, *Sharḥ al-sudūr bi-sharḥ ḥāl al-mawtā wa-l-qubūr* ([Cairo]: Dār Iḥyāʾ al-Kutub al-ʿArabiyya/ʾĪsā al-Bābī al-Ḥalabī, n.d.), 121. This is a dream vision of the son of Abū Dulaf, a high military leader under the third-/ninth-century caliph Maʾmūn.

¹⁹⁹ Asin, *La escatología*, 151, 435. Likewise, in the story of Bulūqiyyā in the *One Thousand and One Nights*, the hero, on his visit to hell, sees cities, castles, and houses, 70,000 of each. See Littmann, *Die Erzählungen aus Tausendundein Nächten*, III, 795. This appears to be taken from a popular but possibly late *isrāʾ* tradition transmitted on the authority of Ibn ʿAbbās. See Muḥyī al-Dīn al-Ṭuʿmī (ed.), *Mawsūʿat al-isrāʾ wa-l-mīrāj* (Beirut: Dār wa-Maktabat al-Hilāl, 1994), 18.

²⁰⁰ Asin, *La escatología*, 142. ²⁰¹ Qurṭubī, *Tadhkira*, 465.

²⁰² *Ibid.*, 486; Suyūṭī, *al-Durr al-manthūr*, VI, 276; Ibn Kathīr, *Tafsīr*, III, 162. The unbelievers are thrown down from it to fall for forty years.

²⁰³ Asin, *La escatología*, 142.

²⁰⁴ The word *falaq* in Qurʾān 113:1 (“Say: I ask the Lord of Daybreak for help [*qul aʿūdhu bi rabbi l-falaq*]”) was interpreted by some to mean a building in hell, sometimes thought to be a prison. See Ṭabarī, *Jāmiʿ al-bayān* (ed. Beirut), XXX, 349–50; Zamaksharī, *Kashshāf*, IV, 825; Fakhr al-Dīn Muḥammad b. ʿUmar al-Rāzī (d. 606/1210), *al-Tafsīr al-kabīr* (Cairo: al-Matbaʿa al-Bahiyya al-Miṣriyya, 1934–62), XXXII, 176; Qurṭubī, *Aḥkām al-Qurʾān*, XX, 254. See more on this below, pp. 133–7.

²⁰⁵ Qurṭubī, *Tadhkira*, 486, 496; Bukhārī, *Ṣaḥīḥ*, I, 466. Cf. Asin, *La escatología*, 436.

²⁰⁶ Qurṭubī, *Tadhkira*, 297.

world” (*min al-dunyā*) or not. Some were reluctant to grant that the entry to hell was situated within the human spatio-temporal reality. Others warned against models of hell that named the seven layers according to the terminology of this-worldly geology. All in all, however, images of hell as a subterranean continent, complete with its own meteorological conditions, its different regions, mountain ranges, valleys, rivers, wells, plants, and cities, appear to have been the norm. This, then, is the spatial setting in which the inhabitants of hell are punished.²⁰⁷

Hell as prison

As we turn to the types of punishments in hell, let us start with some general characterizations of hell as a punitive institution, that is, with traditions representing hell as a prison and as a place of exile. Paul Arno Eichler flatly stated that “Muḥammad thinks of *jahannam* as a prison” and that “the guardians of hell are the prison guards.”²⁰⁸ However, it is doubtful that large-scale prisons were known in first-/seventh-century Arabia.²⁰⁹ It is interesting to note that the Qur’ān (12:25) describes Joseph’s imprisonment in the same terms used in describing infernal punishment: it is a “painful chastisement [*‘adhāb alīm*].” At any rate, later interpreters pounced on the analogy between this-worldly and other-worldly imprisonment. The *locus classicus* in this regard is Qur’ān 17:8: “We have made Hell a *ḥaṣīr* for the unbelievers.” One meaning of *ḥaṣīr* is simply “mat, prepared place [*basāt, firāsh*],”²¹⁰ and it is not clear that the word meant anything else to the early audience of the revelation. However, most commentators prefer the meaning “prison [*sijn*,

²⁰⁷ What is more, it is the case that not only the topography of hell is reminiscent of *this* world, but arguably also how eschatological literature “makes a place” for punishment is similar to how a place was made for punishment in real life. Notions of center and periphery structure the infernal setup. The condemned are punished at hell’s gates (*abwāb*), just as city gates – for example, the Bāb al-Nūbi in Baghdad – were the scene of executions, flogging, and other penal rituals. Under the Saljūqs, symbolic centers of the city (the market square, or the courtyard of the Congregational Mosque) were favorite places of punishment. The imposing concentric structure of the subterranean hell-funnel focuses in on the lowest layer of hell, “the pit [*al-hāwiyā*],” in which punishment is most severe, meted out to the most serious sinners, in proximity to the *axis submundi*, the poisonous tree of *zaqqūm*.

²⁰⁸ Paul Arno Eichler, *Die Dschinn, Teufel und Engel im Koran* (Leipzig: Klein, 1928), 110. In ancient Egypt and in the Gilgamesh epic, hell is often described as a narrow place of confinement, or directly as a prison. See LeGoff, *The Birth of Purgatory*, 19, 25.

²⁰⁹ See *EQ*, s.v. Prisoners, IV, 277a (J. E. Brockopp). It is noteworthy that in the stories of Joseph and Moses, prison (*sijn*) is a means of oppression in the hands of tyrannical Pharaoh who punishes in order to satisfy his desire for self-deification or to yield to the intrigues of spoiled wives. In the tribal context of Arabian society at the time of the Prophet, banishment (*khaṭ*) was a punishment at least as well known as imprisonment, as is attested by the poetry of the brigand-poets (*ṣa‘ālik*). See *EI2*, s.v. *Ṣu‘lūk*, IX, pp. 863b–868a (A. Arazi).

²¹⁰ Ṭabarī, *Jamī‘ al-bayān* (ed. Beirut), XV, 45; Zamakhsharī, *Kashshāf*, II, 608; Ibn Kathīr, *Tafsīr*, III, 27. Cf. Bukhārī, *Ṣaḥīḥ*, *Bāb al-ṣalāt* no. 20, for the prayer-mat (*ḥaṣīr*) of the Prophet.

maḥbas, ḥabs].”²¹¹ By the time of the Saljūqs, this had long since become the accepted interpretation of Qur’ān 17:8.

Perhaps better known in medieval Islam was the idea that imprisonment was not the essential characteristic of the hereafter, but of *this* world. A tradition famously states that “the world is the believer’s prison and the unbeliever’s paradise [*al-dunyā sijnu l-mu’min wa-jannatu l-kāfir*].”²¹² This is an instance of the popular theme of *contemptus mundi*, also quoted by Ghazālī in the eschatological chapter of his *Iḥyā’ ‘ulūm al-dīn*.²¹³ Writers such as the ascetic and traditionist Ibn Abī l-Dunyā (d. 281/894), whose works were well known throughout the Saljūq period, avidly collected *ḥadīths* expressing the same idea.²¹⁴ However, viewing the world as a prison did not preclude the possibility that hell could be seen as a prison for the sinners. Thus, according to a slightly extended version of the above-quoted *ḥadīth*, “the world is the prison of the believer, the grave his fortress, and paradise is his destination [*maṣīruhu*]; the world is paradise for the unbeliever, the grave his prison, and hellfire is his destination.”²¹⁵ What is striking about this *ḥadīth*, besides the fact that it aptly extends the hell/world analogy, is that it talks about this world and the next not so much as a sequence of two separate events but rather as the two coterminous sides of human existence.

The Qur’ān, whether trying to evoke the image of the hereafter as a prison or not, certainly lends itself to such an interpretation. The narrowness of the grave in the intermediary state of the *barzakh* was a much-feared punishment among the pious,²¹⁶ but the idea that the sinner was to be confined in a painfully tight place also applied to the state of things after the Day of Judgment. Thus, Qur’ān 90:20 and 104:8 have it that hellfire is “closed in on them [*‘alayhim mu’ṣada*].” Qur’ān 25:13 talks about the inhabitants of hell being “flung into a narrow place [*makān ḍayyiq*] . . . chained together [*muqarranūn*].” On this Ibn ‘Abbās was reported to have said: “Hell is narrow for the unbeliever like the spearhead [*zuji*] that is squeezed onto the spear.”²¹⁷ Likewise, from the early convert Ka’b al-Aḥbār (d. c. 32/652)²¹⁸ the view was transmitted that there are

²¹¹ Tabarī, *Jamī’ al-bayān* (ed. Beirut), XV, 45; Zamakhsharī, *Kashshāf*, II, 608; Samarqandī, *Tafsīr*, II, 302; Sam’ānī, *Tafsīr*, III, 222; Ibn Kathīr, *Tafsīr*, III, 27 (from Ibn ‘Abbās); ‘Abd Allāh b. ‘Umar al-Bayḍāwī, *Tafsīr* (Beirut: Dār al-Fikr, n.d.), III, 434. Paret translates as “Gefängnis,” but gives “Lager” as an alternative: *Übersetzung*, 228.

²¹² Muslim, *Ṣaḥīḥ*, IV, 2272; Ibn Ḥibbān, *Ṣaḥīḥ*, II, 463; Ibn Māja, *Sunan*, II, 1378; Tirmidhī, *Sunan*, IV, 562; Ibn Ḥanbal, *Musnad*, II, 197, 323, 389, 485; Daylamī, *Firdaws al-akḥbār*, II, 352.

²¹³ Ghazālī, *Iḥyā’*, IV, 130.

²¹⁴ See Ibn Abī l-Dunyā, *K. al-Mawt wa-K. al-qubūr* (reconstructed by Leah Kinberg, Haifa: Publications of the Department of Arabic Language and Literature, Haifa University, 1983), nos. 27, 50, 52, of the *K. al-Mawt*, and passim. Sibṭ b. al-Jawzī claimed he knew more than 130 works written by Ibn Abī l-Dunyā. See *EI2*, s.v. Ibn Abī l-Dunyā, III, 684a–b (A. Dietrich).

²¹⁵ Daylamī, *Firdaws al-akḥbār*, II, 353.

²¹⁶ Ibn Abī l-Dunyā, *K. al-Mawt*, nos. 70, 94. For imprisonment in the grave, see also Sam’ānī, *Tafsīr*, II, 230.

²¹⁷ Qurṭubī, *Tadhkira*, 472; Qurṭubī, *Aḥkām al-Qur’ān*, XIII, 8; Samarqandī, *Tafsīr*, II, 531 (without citing Ibn ‘Abbās).

²¹⁸ *EI2*, s.v. Ka’b al-Aḥbār, IV, 316b (M. Schmitz).

ovens (*tanānīr*) in hell that are as narrow as spearheads in this world, and in which “people are squeezed according to their actions [*tuḍayyiqū ‘alā qawmīn bi-‘mālīhim*].”²¹⁹ Qāḍī flatly states that the sinners in hell are “in prison,” and that “their confinement is narrow [*ḍayyiq madkhaluhum*].”²²⁰ Drunkards, according to the same author, “are gathered in a box of fire for a thousand years, then put in a prison of fire, shackled with chains of fire.”²²¹ The *mīrāj* literature also condemns the drunkard to a “prison with serpents and scorpions.”²²² Tyrants (*zālimūn*) are imprisoned (*maḥbūsūn*),²²³ sometimes in boxes of fire.²²⁴ Ibn al-Jawzī states that “whoever flirts with a woman is imprisoned [*ḥubisa*] in hell, a thousand years for each word.”²²⁵

What do the prisons in hell look like? Ghazālī describes hell as “an abode with straitened sides, gloomy passageways, and shadowy dangers, wherein the prisoner shall dwell forever.”²²⁶ The prisoners are “chained and fettered” and they are “weighed down by shackles, as they writhe in its narrow passages and are broken in its depths.”²²⁷ One cannot help thinking that prisons in Baghdad at the time of Ghazālī, for which there are almost no descriptions in the historical sources, must have looked rather similar. As for the shackles mentioned by Ghazālī, the Qur’ān speaks at some length about different types of chains with which people in hell are tied up. Qur’ān 40:71–2 announces the moment “when iron collars [*aghlāl*] and chains [*salāsīl*] are about their necks.” The people of hell are bound in “a chain whereof the length is seventy cubits [*dhirā’*]” (69:32), and God threatens the sinners with “heavy fetters [*ankāl*]” (73:12). Eschatologists only had to pick up from here. Qurṭubī collects traditions that present the reader with a whole array of binding devices. In the prison cells in the castles of hell there are fetters (*quyūd*), chains (*salāsīl*), and iron collars (*aghlāl*).²²⁸ A chain (*silsila*) hangs down from the brim of hell to its bottom, each unit of this monstrous chain being longer than the distance between Mecca and Kūfa.²²⁹ From dark clouds chains and iron collars rain down on the inhabitants of hell.²³⁰ The Prophet, in his

²¹⁹ Ibn Abī Shayba, *Muṣannaf*, VII, 51; Abū Nu‘aym, *Ḥilyat al-awliyā’,* II, 253, V, 371; Qurṭubī, *Tadhkira*, 486.

²²⁰ Qāḍī, *Daqā’iq al-akhbār*, 68. Pazdawī, *Uṣūl al-dīn*, 135, also uses this terminology.

²²¹ Qāḍī, *Daqā’iq al-akhbār*, 71. Tabarī relates that people are imprisoned in wells of fire. See his *Jamī’ al-bayān* (ed. 1903), XXII, 82.

²²² Asin, *La escatologia*, 160. ²²³ Sam‘ānī, *Tafsīr*, IV, 334.

²²⁴ Asin, *La escatologia*, 435. Makkī says that visiting bath-houses is recommended because the heat therein reminds one of “the biting pain of touching it [hellfire] and of the surrounding darkness – because with reference to darkness, the bath-house is very similar to hell: beneath you the heat, above you darkness . . . [thus] one thinks of one’s imprisonment in hell.” See his *Qūt al-qulūb* (tr. Gramlich), III, 604.

²²⁵ Ibn al-Jawzī, *Dhamm al-hawā’,* 203. ²²⁶ Ghazālī, *Iḥyā’,* IV, 530. ²²⁷ *Ibid.*

²²⁸ Qurṭubī, *Tadhkira*, 465, 481. Qurṭubī relates that the sinners’ “hands, feet, and necks are tied together in chains, then they are thrown in the Fire shackled [*masfūdūn*].” See *ibid.*, 483.

²²⁹ *Ibid.*, 481–2; Tabarī, *Jamī’ al-bayān* (ed. Beirut), XXIX, 63; Sam‘ānī, *Tafsīr*, VI, 41; Ibn al-Jawzī, *Zād al-masīr*, VIII, 353.

²³⁰ Qurṭubī, *Tadhkira*, 481; Tha’labī, *Tafsīr*, VIII, 282; Ibn Kathīr, *Tafsīr*, IV, 89; Suyūṭī, *al-Durr al-manthūr*, VII, 306.

journey to hell, sees the inhabitants of fire wearing yokes, like “collars of fire [aṭwāq min al-nār].”²³¹

As in the case of valleys and mountains in hell, the eschatological imagination could not resist the temptation to identify certain unusual words in the Qurʾān with concrete places of confinement. According to the Qurʾān (83:8), *sijjīn* is the place where the records of the wicked are kept, or possibly it is the record itself. Most commentators took *sijjīn* to be a proper name (*ism ʿalam*) denoting the bottom layer of hell, but some insisted that *sijjīn* was the name of a prison in hell.²³² The celebrated pericope in Qurʾān 113:1 – “Say: I seek refuge with the Lord of the Daybreak [*falaq*]” – was also subjected to such exegetical acrobatics. Ibn ʿAbbās was said to have held that *falaq* is a prison in hell.²³³ Zamakhsharī (d. 538/1144) knew the meaning of *falaq* both as a place of confinement and as an instrument in which the victim is fastened so as to receive a beating.²³⁴ The physical pain of being coerced into a body position that allows for no movement corresponds with the spiritual suffering and existential angst of the believer whose chest God “makes narrow and squeezed [*yaʿʾalu ṣadrahu ḍayyiḡan wa-harajan*]” (Qurʾān 6:125) in the expectation of the Judgment and punishment in hell. Paradise, on the other hand, is a place of spatial liberation in which the souls move freely around at their leisure. “I heard,” Mālik b. Anas is reported to have said, “that the souls of the believers are free to go wherever they please.”²³⁵

Imprisonment in medieval Islam may have appeared to many as a punishment reminiscent of the fate awaiting sinners in hell, for the prisoner is taken from this world and confined to a “narrow place [*makān ḍayyiḡ*],” as the Qurʾān states, or to “a subterranean abode with straitened sides,” which is how Ghazālī describes hell. A prison poem dating to the third/ninth century (see above) states that “we’re banished from the world and yet / in her we dwell, not dead and not alive. / When prison guards come look for us, we jolt, / rejoice and cry: This one is from the world!”²³⁶ His prison, the poet suggests,

²³¹ Asín, *La escatología*, 437.

²³² See Rāzī, *al-Tafsīr al-kabīr*, XXXI, 84; Qurtubī, *Aḥkām al-Qurʾān*, XIX, 258; *EI2*, s.v. *Sidjdjīn*, IX, 538a (V. Vacca).

²³³ Qurtubī, *Tadhkīra*, 486; Qurtubī, *Aḥkām al-Qurʾān*, XX, 254; also Daylamī, *Firdaws al-akhbār* (ed. Zaghūlū), III, 159, 217 (from ʿAbd Allāh b. ʿAmr). In the story of Bulūḡiyā in *The One Thousand and One Nights*, *falaq* is the name of a giant snake at the bottom of the universe which holds *jahannam* in its fangs. See Littmann, *Die Erzählungen aus Tausendundein Nächten*, III, 805. Cf. *EI2*, s.v. *Alf layla wa-layla*, I, 363a (E. Littmann), where it is stated that “the journeys of Bulūḡiyā . . . may reflect motifs of the Babylonian epic of Gilgamesh.” From Kaʿb al-Aḥbār the notion was transmitted that *falaq* was a house in hell, and “when it is opened, all the inhabitants of the fire scream because of its intense heat.” See Qurtubī, *Tadhkīra*, 486.

²³⁴ Zamakhsharī, *Asās al-balāgha*, 481b.

²³⁵ Ibn Abī-Dunyā, *K. al-Mawt*, no. 86. Another well-known prison in hell is *būlas*; this is where the proud (*al-mutakabbirūn*) are kept. See Ibn Ḥanbal, *Musnad*, II, 179; Ibn Abī Shayba, *Muṣannaf*, V, 329; Tirmidhī, *Sunan*, IV, 655; Daylamī, *Firdaws al-akhbār* (ed. Zaghūlū), V, 479; Ibn Kathīr, *Tafsīr*, I, 126; Ibn ʿAsākir, *Madḥ al-tawāḍuʿ wa-dhamm al-kibr*, 37; Qurtubī, *Tadhkīra*, 487.

²³⁶ Samarqandī, *Tafsīr*, I, 411; Samʿānī, *Tafsīr*, II, 34. Cf. above, pp. 89–90.

partakes of the netherworld. Thus, the transfer between the two worlds goes in both directions: While imprisonment in this world was likened to eschatological punishment, hell was described as a place similar to earthly prisons. As long as sinners are in hell, states Qurṭubī, “they are separated from the pleasures of the Garden . . . This is like people detained in prisons [*al-maḥbusūn fi l-sujūn*].”²³⁷

Hell as a place of exile

“What, prison bars and iron chains, / and yearning’s flames, and exile pains,” lamented the poet-mystic ‘Ayn al-Quḍāt al-Hamadhānī (d. 525/1131) from his prison cell in Baghdad.²³⁸ As I have argued above, exile and imprisonment in medieval Islamic society were seen in close conceptual proximity.²³⁹ Not surprisingly, then, in the same way in which hell could be thought of as a prison, it could be conceived as a place of exile.²⁴⁰ A tradition preserved by Qurṭubī claims that hell lies on the far side of the mythical mount Qāf, in a place situated at the absolute limit of man’s imagination. Like the Dahlak islands off the Eritrean coast, to which Qadarites were banished under Walīd II (r. 743–4),²⁴¹ or like Oman, another favorite place of banishment under the Umayyads,²⁴² hell was a truly well-suited place of exile. In analogy to the mythical land of Wāqwāq, with its fabled tree sprouting human-fruit, hell, with the devil-headed *zaqqūm* tree at its bottom, was conceived as very distant but at the same time connected and in fact coterminous with the inhabited world of the here and now.²⁴³ As the Islamic recensions of the Alexander romance tell us, it took an Alexander the Great to travel to such a wondrous place as Wāqwāq, and to travel into hell was at least as onerous a test. As a *ḥadīth* puts it, “traveling is a punishment [*al-safar qiṣ’atun min al-‘adhāb*],”²⁴⁴ and Maydānī (d. 518/1124), the collector of proverbs, explains that the term

²³⁷ Qurṭubī, *Tadhkira*, 410.

²³⁸ ‘Ayn al-Quḍāt al-Hamadhānī, *Shakwā al-gharīb ‘an al-awṭān*, “Complaints of a Stranger Exiled from Home,” tr. by A. J. Arberry, *A Sufi Martyr: The Apologia of ‘Ayn al-Quḍāt al-Hamadhānī* (London: George Allen and Unwin, 1968), 21.

²³⁹ Qur’ān commentators and jurists alike interpreted the punishment for “those who wage war on God [*alladhīna yuḥāribuna llāh*]” mentioned in *sūra* 5:33 “that they be banished from the earth [*an yunfaw min al-ard*]” as constituting either exile or imprisonment. See Ṭabarī, *Jāmi’ al-bayān* (ed. Shākir), X, 273–4; Jaṣṣāṣ, *Aḥkām al-Qur’ān* (Cairo: Dār al-Muṣṣhaf, [1965]), II, 59. *EQ*, s.v. Prisoners, IV, 277a (J. E. Brockopp), repeats the common perception that “imprisonment is not counted as one of the Qur’ānic punishments for crimes,” but the pericope in 5:33 leaves some room for diverging views. On banishment and imprisonment in Islamic law, see also Peters, *Crime and Punishment*, 34–5, 58.

²⁴⁰ Meier, “The Ultimate Origin,” 100.

²⁴¹ Julius Wellhausen, *Das arabische Reich und sein Sturz* (1902, Berlin: de Gruyter, 1960), 222.

²⁴² *MA*, III, 185.

²⁴³ On the mythical island of Wāqwāq, see *EI2*, s.v. Wāqwāq, XI, 103b–108b (S. M. Toorawa).

²⁴⁴ Ṣan’ānī, *Muṣannaf*, V, 164; Bukhārī, *Ṣaḥīḥ*, II, 639; Muslim, *Ṣaḥīḥ*, III, 1526; also in Aḥmad b. Muḥammad al-Maydānī, *Majma’ al-amthāl* (Bratislava: Typis universitatis, 1826), I, 303. Cf. Kaykā’us b. Iskandar, *Qābūs-nāma*, 38: *al-nuqla muthla*.

‘*adhāb*’ here means “infernal punishment,” because traveling is so troublesome.²⁴⁵ The poet Jabālī (d. 555/1160) described exile as a “painful punishment [‘*adhāb-i alīm*],” a formulation reminiscent of Qur’ānic language.²⁴⁶

In a literal sense, hell could be seen as banishment from the surface of the earth to its nether regions. However, theological notions entered the picture too. Man’s primordial nature (*fitra*), according to a famous *ḥadīth*, was to acknowledge God as the Lord; hence paradise was every believer’s natural destination (*maṣrūhu*).²⁴⁷ Thus, a sojourn in hell could be viewed as a banishment from one’s natural home in the hereafter, namely, from paradise. The further down one was banished into hell, the greater the distance to paradise, and the alienation from God. This is why the bottom layer of hell is the abode of the hypocrites (*munāfiqūn*; see Qur’ān 4:145) and the polytheists (*mush-rikūn*). Secret or open disbelief in God, the act of taking created things as His partners, is the ultimate act of turning away from God, as is stated in Qur’ān 74:17: “Who turns away from the remembrance of his Lord, He will thrust him into ever-growing torment [*man yu’riḍu min dhikri rabbihi yaslukuhu ‘adhāban ṣa’ad*].”²⁴⁸ Spiritual alienation in hell finds further expression in the often-repeated idea that the worst punishment of the inhabitants of the Fire is the lack of *visio beatifica*, the beholding of God’s face (*ru’yat Allāh*). “Banishment from God [*ib‘āduhum ‘anhu*],” writes an eighth-/fourteenth-century author, “is the worst punishment of the people of hell.”²⁴⁹ Ghazālī talks about the fire of regret over being deprived of the vision of God, which he calls the lasting torment of hell.²⁵⁰ Such statements aim at spiritual, or moral, rather than physical exile.²⁵¹

²⁴⁵ Maydānī, *Majma‘ al-amthāl*, I, 344. ²⁴⁶ *LN*, s.v. *ghurbat*.

²⁴⁷ Daylamī, *Firdaws al-akhbār*, II, 353.

²⁴⁸ Cf. O’Shaughnessy, “Sin as Alienation in Christianity and Islam,” *Boletín de la Asociación Española de Orientalistas* 14 (1978), 127–35. The opposite of such a stance is repentance (*tawba*), lit. “to turn toward,” in the sense of an existential (re)orientation toward God, or *metanoia*, before the Judgment. See van Ess, *Theologie und Gesellschaft*, IV, 579.

²⁴⁹ Zayn al-Dīn ‘Abd al-Raḥmān Ibn Rajab, *al-Takhwīf min al-nār* (Damascus: Dār al-Bayān, 1399/1979), 143.

²⁵⁰ Ghazālī, *Kīmīyā-yi sa’adat* (Tehran: Kitābkhāna-yi Markazī, 1339/1960), 98. Cf. *ibid.*, 91–6.

²⁵¹ In ancient Egypt, punishment was both physical and moral, accentuating remoteness from the gods. See LeGoff, *The Birth of Purgatory*, 19. In the Gilgamesh epic, the underworld is a realm of dust and darkness, a “land from which no traveler returns.” See *ibid.*, 25.

Hell's creatures and their punishments

Hell's angels

Having laid out the physical structure of hell, let us begin to fill this imaginary landscape with the unlucky creatures that populate it. Unlike in the Christian tradition, evil demons are punished in hell along with humans (Qur'ān 26:94–5), and Iblīs is not the Lord of Hell, but rather its most famous inmate.¹ The “guardians of hell [*khazana*],” on the other hand, are angels.² They guard the gates of hell (39:71) and are set to watch over the fire (74:31). Whether the *zabāniyya* mentioned in Qur'ān 96:18 are identical with the *khazana* is doubtful.³ However, in the exegetical tradition as well as the popular imagination, the identification was readily assumed.⁴ The Qur'ān (74:31) affirms that there are nineteen guardians of hell but at the same time declares that God has made their number “a stumbling block for those who disbelieve.” This has indeed proven a stumbling block, and not only for unbelievers. How could nineteen angels simultaneously manage to punish the myriad sinners in hell? Qurṭubī relates a discussion involving the early authority Abū l-'Awwām.⁵ “Who are the nineteen?” a man asks Abū l-'Awwām. “Nineteen thousand angels, or nineteen angels,” answers the traditionist, who is not so sure himself. “No,” the man

¹ Abū l-'Alā al-Ma'arrī describes his protagonist Ibn al-Qāriḥ's conversation with the tortured Iblīs in hell. See Ma'arrī, *Risālat al-ghufrān* (tr. Schoeler), 173–5; Asín, *La escatología*, 96. Ibn al-Qāriḥ sees Iblīs in the upper layer of hell, but Tha'labī, *Qīṣaṣ al-anbiyā'*, 7, locates Iblīs and his armies in the seventh – that is, the bottom – layer of hell.

² The angelic torturers of the Muslim hell could seem a contradiction in terms. However, they may also be interpreted as another instance of the *jamāl/jalāl* duality in Muslim eschatological thought. Cf. pp. 113–14.

³ Eichler, *Die Dschinn, Teufel und Engel im Koran*, 111.

⁴ Zamakhsharī, *Kashshāf*, IV, 573; Sam'ānī, *Tafsīr*, VI, 95; Qurṭubī, *Aḥkām al-Qur'ān*, I, 92; Suyūṭī, *al-Durr al-manthūr*, I, 26; Qādī, *Daqā'iq al-akhbār*, 67. On the etymology of *zabāniyya*, see *EI2*, s.v. *Zabāniyya*, X, 369 (eds.).

⁵ This could be Abū l-'Awwām al-Qaṭṭān al-'Azīz b. al-Rabī' al-Bāhilī, a contemporary of Mālik b. Anas (d. 179/796), since he related traditions from Abū l-Zubayr. See Bukhārī, *al-Tārīkh al-kabīr* (Beirut: Dār al-Fikr, n.d.), VI, 425; Ibn Ḥajar al-'Asqalānī, *Tahdhīb al-tahdhīb* (Beirut: Dār al-Fikr, 1404/1984), VI, 300.

corrects him, “they are nineteen.” Abū l-ʿAwwām, realizing his mistake, quickly concurs: “Correct, they are nineteen, each one of them has in his hands a bifurcated iron rod [*mirzabba lahā shuʿbatān*].”⁶ This is perhaps a proto-version of other *ḥadīths* that present the guardian-angels of hell with all sorts of fabulous attributes. Either the *zabāniyya* are immense in size, with shoulders as far apart as east and west,⁷ or they use both hands and feet to hold the inhabitants of hell, in each extremity 10,000 of them.⁸ One tradition states that God created an angel with as many fingers as there are inhabitants in hell. Every inhabitant is punished (*yuʿadhḥab*) by one finger, which is as long as the distance between the earth and the sky.⁹ Others, however, preferred to follow Abū l-ʿAwwām’s initial intuition and claimed that in reality there were more than nineteen angels in hell, possibly even angels without number.¹⁰

The guardian-angels in hell are fearsome floggers, carrying iron staffs with which they beat the inhabitants of hell. “If he [the chief angel] says: ‘Seize him!’ a thousand angels seize him in such-and-such a way. When they put their hands on his bones, his bones are crushed, and his bones and his flesh become broken particles [*rufāt*].”¹¹ The angel-tormentors slit the sinners’ corners of the mouth with iron hooks.¹² The *zabāniyya* have repulsive faces, eyes like flashing lightning, teeth white like cow’s horns, lips hanging down to their feet, and they dress in black clothes and exude rotten-smelling breath.¹³ Attired in garments of fire, they stand next to the Balance (*al-mīzān*), ready to drive the sinners – after they have seized the soul as it departs from the body¹⁴ – into hell with hooked rods of iron.¹⁵ Mālik, the chief *zibnī* (sing. of *zabāniyya*), is described as being very ugly and ill-tempered; in fact he is choleric, “made of the wrath of God.” During Muḥammad’s night journey, Mālik grumblingly opens the gate of hell to the Prophet.¹⁶ He guards the entry to hell, its first gate, driving people into the Fire.¹⁷ He is the only one among the angels in hell strong enough to tame the beast Jahannam.¹⁸ However, he is not the Lord of Hell like Satan in the Christian tradition, but rather a relatively low-ranking angel and in all respects a submissive agent of God’s will.¹⁹

⁶ Qurtubī, *Tadhkira*, 471. ⁷ *Ibid.*, 483.

⁸ Qādī, *Daqāʿiq al-akhbār*, 67. ⁹ Qurtubī, *Tadhkira*, 482.

¹⁰ According to Samarqandī, *Tafsīr*, III, 494, the *zabāniyya* cannot be counted.

¹¹ Qurtubī, *Tadhkira*, 483. For the term *rufāt*, see Qurʾān 17:49, 98: “When we are bones and fragments [*idhā kunnā ʿizāman wa-rufātān*],” that is, when the bodies are decayed. Certain *ḥadīths* suggest that the sinners in hell await the same gruesome process of decay and rottenness as the body in its earthly grave. Cf. Abū Nuʿaym, *Ḥilyat al-awliyāʾ*, VI, 11, describing the *zabāniyya* beating the sinners with iron rods.

¹² Qushayrī, *K. al-Mīrāj*, 40. ¹³ Ghazālī, *al-Durra al-fākhira*, 17. ¹⁴ *Ibid.*, 7.

¹⁵ Ghazālī, *Ḥiyāʾ*, IV, 520.

¹⁶ Qushayrī, *K. al-Mīrāj*, 46; Thaʿlabī, *Tafsīr*, V, 61; Suyūṭī, *al-Laʿālī al-maṣnūʿa*, I, 64.

¹⁷ Ghazālī, *al-Durra al-fākhira*, 99.

¹⁸ Qurtubī, *Tadhkira*, 481 (more on this fabulous beast below, pp. 141–3).

¹⁹ Eichler, *Die Dschinn, Teufel und Engel im Koran*, 112.

Animals in hell

Alongside Mālik and his angel torturers, hell employs an astonishing array of animal punishers. Snakes and scorpions figure most prominently.²⁰ They populate the shores of the infernal ocean, torment people in their prison cells of fire, and lurk along the bottoms of hell's valleys. Like the *zabāniyya* they have fantastic proportions. Scorpions are "as big as black mules, with tails like lances, and every tail has 360 spines, and every spine has 360 sections, and every section has 360 bulbs [*qulla*] filled with poison."²¹ Snakes as thick as the necks of camels or as long as palm trees pursue the fleeing sinners, biting off their hands, entering their bodies and leaving through their backs.²² A bald-headed snake with two black spots above the eyes is curled around the neck of the stingy person, "grabbing his jawbones," while hissing "I am your money . . . I am your treasure . . ." into his ears.²³ That a man's sins come back in the form of an animal to haunt him is a favorite trope in descriptions of hell's punishments. Animals in general claim a high rank among the gaolers and torturers in hell. In fact, a whole bestiary inflicts all sorts of pain on the denizens of hell, from vermin²⁴ to elephants.²⁵ Even while they are still in the grave, rebels are bitten by dogs, skeptics are tormented by pigs, and those who were careless in prayer are punished by wolves.²⁶ Lions and wolves are transformed into terrifying monsters that hunt the sinners in hell.²⁷ Cows, camels, and goats punish those who did not give the alms due from them: "They will step on them with their cloven hoofs and stab them with their horns."²⁸

The biggest and most terrifying of all the animals in hell, however, is Jahannam itself.²⁹ In a version of the *isrā'* story in Ṭabarī's Qur'ān

²⁰ Scorpions appear to correspond to very ancient ideas about the netherlands, perhaps because their natural habitat is underneath stones. Gilgamesh, on his quest to find the immortal Uta-Napishti at the end of the world, encounters a scorpion-man who guards the way underneath a mountain leading to the netherworld. See anon., *The Epic of Gilgamesh* (translated by Andrew George; London: Penguin, 2000), 73.

²¹ Tha'labī, *Qīṣaṣ al-anbiyā'*, 6.

²² Qurṭubī, *Tadhkira*, 354, 485–6; Tha'labī, *Qīṣaṣ al-anbiyā'*, 6; Asin, *La escatología*, 159–60, 435.

²³ Ghazālī, *Ihyā'*, IV, 533; Qurṭubī, *Tadhkira*, 354.

²⁴ Qurṭubī, *Tadhkira*, 489; Ibn 'Asākir, *Tārīkh madīnat Dimashq*, LXV, 231. Nazzām discusses a Prophetic *ḥadīth* according to which mosquitoes go to hell, while bees are allowed into paradise. See Goldziher, *Richtungen der islamischen Koranauslegung*, 160.

²⁵ The heads of elephants, lions, and dogs sprout from the branches of the *zaqqūm* tree in the Uighur *mī'rāj* manuscript (Paris Bibliothèque Nationale, manuscript supplément Turc 190). See Marie-Rose Séguy, *The Miraculous Journey of Mahomet* (New York: G. Braziller, 1977).

²⁶ Ghazālī, *al-Durra al-fākhira*, 27–8.

²⁷ El-Saleh, *La vie future*, 49–50.

²⁸ Bukhārī, *Ṣaḥīḥ*, II, 508, 530; Muslim, *Ṣaḥīḥ*, II, 681; Ṣan'ānī, *Tafsīr*, II, 274; Ṭabarī, *Jāmi' al-bayān* (ed. Beirut), X, 120; Qurṭubī, *Tadhkira*, 354.

²⁹ See *EI2*, s.v. *Djahannam*, II, 381b (L. Gardet).

commentary, the Prophet Muḥammad, walking behind Gabriel through the darkness, hears shouts of pain and anger in the distance. When he asks his guide, Gabriel tells him: “This is Jahannam! Let it be!”³⁰ As it turns out, Jahannam is only waiting for its big entry onto the eschatological stage. The dog is woken up, so to speak, on the Day of Resurrection. Then Jahannam is brought forth with 70,000 reins, each rein held by 70,000 angels.³¹ This enormous creature is paraded in front of the terrified assembly of humankind waiting for the Judgment. It wildly pulls at its reins and brays like a donkey,³² and the *zabāniyya* who guard it, despite the fact that they are so powerful that each of them could shake mountains and make the earth tremble,³³ cannot resist its fierceness. Quite literally, hell breaks loose:

Jahannam escapes from their hands and they cannot catch it again. All sink to their knees, but Muḥammad, with God’s permission, stands up, takes the beast by its reins, and says: “Go back, [be] driven back to what you were before, until people are delivered to you in hosts!” Jahannam says: “Get out of my way! For you, O Muḥammad, are forbidden to me!” Then Jahannam is consigned to the left side of the Throne, waiting for the Judgment.³⁴

No doubt the presence of such a domesticated *monstrum tremendum* at the Day of Judgment is a reminder of God’s complete sovereignty over creation.³⁵ Some Muslim exegetes held such stories to be true only in the allegorical sense, but the majority, it appears, insisted on their reality (*ḥaqq*). Qurṭubī claimed that Jahannam can indeed speak, and not in the figurative, but in the literal sense: speech, he argued, is a function only of being alive, not of having a tongue.³⁶ If this is still no proof that Jahannam is an animal, the following tradition drives the point home: “Who says a lie about me,” the Prophet is reported to have said, “will be placed between the two eyes [i.e. in front] of Jahannam.” Someone asks the Prophet: “So does Jahannam actually have eyes?” In lieu of an answer, Qurṭubī quotes another Prophetic tradition: “Jahannam raises its neck out of the Fire on the Day of Resurrection. It has two eyes with which it looks at people, two ears with which it hears, and a tongue with which it speaks.”³⁷

³⁰ Asín, *La escatología*, 426.

³¹ Muslim, *Ṣaḥīḥ*, IV, 2184; Tirmidhī, *Sunan*, IV, 701; Qurṭubī, *Tadhkira*, 467, 481; Ṭabari, *Jāmiʿ al-bayān* (ed. Beirut), XXX, 188; Ibn al-Jawzī, *Zād al-masīr*, IX, 122.

³² Ghazālī, *al-Durra al-fākhira*, 67; Ghazālī, *Iḥyāʾ*, IV, 518.

³³ Qurṭubī, *Tadhkira*, 467. ³⁴ *Ibid.*, 468.

³⁵ On the *tremendum* and *fascinans* aspect of monsters in the religious imagination, see Timothy K. Beal, *Religion and Its Monsters* (New York: Routledge, 2002), 7–10.

³⁶ Qurṭubī, *Tadhkira*, 479.

³⁷ *Ibid.*, 480; Ibn Ḥanbal, *Musnad*, II, 336; Muttaqī, *Kanz al-ummāl*, IV, 17. Cf. Asín, *La escatología*, 442.

Ghazālī was also outspoken against allegorical interpretations of such reports, insisting on the reality (*ḥaqq*) of the phenomena they describe.³⁸ He argued, however, that the fearsome beast Jahannam (and, by analogy, other beasts and marvelous creatures in hell) possesses a reality that is different from the reality experienced in *this* world. Further, what in this world is a mere abstraction in the hereafter can become a reality of its own kind. Thus, on the Day of Resurrection, the Qurʾān will greet the believers in the form of a handsome young man; Friday, the day of prayer, will become a beautiful bride led in procession; and the earth will appear as a hoary-haired old woman.³⁹ Death itself will be brought in the form of a white ram and then slaughtered between paradise and hell, thereby abolishing time and giving over the denizens of the two afterworlds to eternal reward or punishment.⁴⁰

This other reality of which Ghazālī speaks is what he calls the *ʿālam al-malakūt* (“angelic world”), which is not perceivable to the human senses, but also more than just an invented meaning.⁴¹ The *ʿālam al-malakūt* appears to bear some similarity to what LeGoff has termed the realm of the *imaginaire*, a third level of existent things, filled with *mirabilia* that occupy a place between concrete tangibles and mere abstractions with no reality.⁴² Ghazālī insists that, if tradition verifies that man’s sins can be transformed into animals torturing him in hell, man must indeed believe in the “reality” (*ḥaqq*) of such a phenomenon. It is in this sense that Ghazālī can state that “the man who denies the existence of physical punishment in the hereafter . . . must be considered an unbeliever.”⁴³

³⁸ Ghazālī, *al-Durra al-fākhira*, 69. Cf. Ian Richard Netton, “The Perils of Allegory: Medieval Islam and the Angel of the Grave,” in Netton (ed.), *Studies in Honour of Clifford Edmund Bosworth*, vol. III, *Hunter of the East* (Leiden: Brill, 2000), 425: “To deny, or even to allegorize, the reality of what occurred could be interpreted as a first step to the denial of other vital aspects of the afterlife, perhaps even of the eternal vision of God Himself.”

³⁹ Ghazālī, *al-Durra al-fākhira*, 107–8; Qurṭubī, *Tadhkira*, 447.

⁴⁰ Bukhārī, *Ṣaḥīḥ*, IV, 1760; Muslim, *Ṣaḥīḥ*, IV, 2188; Ibn Ḥanbal, *Musnad*, III, 9; Tirmidhī, *Sunan*, V, 315; Ghazālī, *Iḥyāʾ*, IV, 534.

⁴¹ Ghazālī, *Mishkāt al-anwār* (Provo: Brigham Young University Press, 1998), 26. For a sustained discussion of the notion of *malakūt*, well beyond the scope of the present study, see Timothy J. Gianotti, *Al-Ghazālī’s Unspeakable Doctrine of the Soul: Unveiling the Esoteric Psychology and Eschatology of the Iḥyāʾ* (Leiden: Brill, 2001), 148–67. Ghazālī, in his *Tahāfut al-falāsifa* (Provo: Brigham Young University Press, 1997), ch. 40, refutes the philosophers’ position that the universe is eternal by pointing out that it is within God’s power to establish a “new order” which follows its own laws of causality on the Day of Judgment. On this point, see William Montgomery Watt, *A Muslim Intellectual: A Study of al-Ghazālī* (Edinburgh: Edinburgh University Press, 1963), 59. On Ghazālī’s conception of the “reality” of afterlife, see further Ebrahim Moosa, *Ghazālī and the Poetics of Imagination* (Chapel Hill: University of North Carolina Press, 2005), 121–2, 230, 240.

⁴² LeGoff, *The Medieval Imagination*, introduction. Cf. *ibid.*, 27: “[M]y impression is that in the Muslim world the lexicon of the marvelous was quite rich,” with further reference to Mohamed Arkoun (ed.), *L’étrange et le merveilleux dans l’Islam médiéval* (Paris: Editions J. A., 1978).

⁴³ Ghazālī, *Fayṣal al-tafrīqa* (Cairo: ʿIsā al-Bābī al-Ḥalabī, 1961), 191.

However, the presence of animals in hell is by no means exhausted with this. Not only are the sinners punished by animals, but they are also transformed into animals as a punishment *ipso facto*. The bestialization of sinners is prefigured in the Qur'an where those who disbelieve are called the "worst beasts of burden [*sharr al-dawwāb*: 8:55]." As the Qur'an specifies, sinners will be driven toward the Fire like cattle that are driven toward the water (*nasūqu l-mujrimīna ilā jahannam wirdan*, 19:86). The metamorphosis (*maskh*) of the sinners into animals also appears to relate to the notion that man is punished with the likeness of his crime.⁴⁴ Those who neglected to wash themselves ritually, or were absent-minded when they prayed, are resurrected with pigs' bodies and dogs' faces.⁴⁵ People graze the thorny shrubs in hell, like cattle branded with red-hot irons,⁴⁶ as a punishment for not giving the alms for their cattle, and the man who uttered an insult (or a boast, *kalima 'azīma*) and did not take it back is seen by the Prophet during his night journey in the form of a bull coming out of a small den, and then trying to get back inside, but to no avail.⁴⁷ With these last examples, attention has been shifted from describing hell's punishers to the actual punishments that its inhabitants are made to suffer. The time has come, therefore, to review in systematic fashion the array of practices reserved for the damned.

Types of punishment in hell

Asín judged that reports about punishment in the Muslim hell are too disparate to allow for synthetic analysis.⁴⁸ One is reminded of Meier's remark about the "decorative structure" of the "baroque traditions" about hell.⁴⁹ The disparateness lamented by Asín is a function of the fact that descriptions of punishment in hell are scattered over a variety of sources which originate in different geographical and historical milieus. Reports about punishment in hell no doubt reflect a plethora of interests of different classes of people. To

⁴⁴ Cf. Uri Rubin, "Apes, Pigs, and the Islamic Identity," *IOS* 17 (1997), 89–105. Rubin argues that apes and pigs were the most characteristic symbols of Jewish–Christian historical punishment in the Qur'an. Therefore, in early Islam Muslims who assimilated themselves with the Jews and Christians of the conquered territories were threatened with eschatological metamorphosis into apes and pigs. In Saljūq times, however, this connection seems to have lost its *raison d'être*. A variety of sinners, not only heretics accused of Christian or Jewish orientation, came under the threat of this punishment, a fact also noted by Rubin, *ibid.*, 100–1. For an overview of *maskh*, see R. Traini, "La métamorphose des êtres humains en brutes d'après quelques textes arabes," in F. de Jong (ed.), *Miscellanea arabica et islamica: dissertationes in academia Ultrajectina prolatae anno MCMXC* (Leiden: Peeters, 1993), 90–134.

⁴⁵ Asín, *La escatología*, 436 (cycle 2b).

⁴⁶ El-Saleh, *La vie future*, 50 (from Samarqandī, *Qurrat al-'uyūn*, 70).

⁴⁷ Tha'labī, *Tafsīr*, IV, 57; Tabarī, *Jāmi' al-bayān* (ed. Beirut), XV, 7. Sodomites, according to Ibn al-Jawzī, *Dhamm al-hawā*, 216, are resurrected as apes and pigs, but in this case metamorphosis is no longer a "likeness-of-sin" punishment but rather a punishment for any kind of moral depravation. Cf. Rubin, "Apes, Pigs, and the Islamic Identity," 100.

⁴⁸ Asín, *La escatología*, 178. ⁴⁹ Meier, "The Ultimate Origin," 103.

disentangle the threads of tradition woven into eschatological manuals such as the ones by Qurṭubī or Qāḍī may indeed appear daunting or even impossible. Nevertheless, on the basis of a broader range of sources than Asín had at his disposal, it is worth a try.

In part I of this study, I have established a classification of four different types of punishment: executions, corporal punishments, shaming, and banishment and imprisonment. All four types have analogies in the hereafter. Descriptions of hell as prison or place of exile have already been dealt with. The act of “making someone public [*tashhūr*]” is a very prominent punishment in Islamic eschatology. However, it seems to me that the issue is of such importance that I would like to postpone discussion of it to the end of this chapter. Thus, I turn to the two remaining categories, punishments directed against life and punishment directed against the body. As for executions, it may be objected that this is hardly an option in hell, since its denizens are already dead. However, the Qurʾān itself (43:77) states that the inhabitants of hell implore their torturers to put an end to their lives – a wish that is never granted. There is a further problem of how to explain that the inhabitants of hell can be subjected to execution or mutilation multiple times.⁵⁰ This too did not prove an obstacle to the imagination of the eschatologists. The most common strategy to overcome the problem was to assume, with the Qurʾān (4:56), that the shattered bodies of the condemned would be restored immediately.⁵¹

The most natural form of execution in hell may seem to be that by fire. Fire in Judaism, Christianity, and Islam is a manifestation of divine glory; it is God's preferred tool of punishment.⁵² In hell, as Ghazālī puts it, there is “fire above them, fire beneath them, fire on their right, and fire on their left, so that they drown in a sea of fire: their food is fire, their drink is fire, their apparel is of fire, their resting-place is fire.”⁵³ Flames roar up from the bottom of hell, pushing those who fall into hell from the Bridge back to the top, so that “they fly like sparks [*yaḥḥūru ka-l-sharar*].”⁵⁴ As the Qurʾān makes clear, the fire in hell is strong enough to inflict mortal injuries. It shrivels people's skins (*lawwāḥa li-l-bashar*, Qurʾān 74:29), burns their faces (14:50, 23:104, 33:66), reaches up to their hearts (104:7). The *ḥadīth* tradition is no less drastic: the heat grills

⁵⁰ See, for example, Qurʾān 22:19–20: “Garments of fire will be cut out for them; boiling fluid will be poured down on their heads, whereby that which is in their bellies, and their skins too, will be melted.”

⁵¹ See further Tirmidhī, *Sunan*, IV, 705; Ibn al-Mubārak, *Musnad*, I, 77; Abū Nuʾaym, *Ḥilyat al-awliyāʾ*, VIII, 183; Ṭabarī, *Jāmiʿ al-bayān* (ed. Beirut), XV, 7, XVII, 134; Thaʿlabī, *Jāmiʿ*, VI, 57; Suyūṭī, *al-Durr al-manthūr*, VI, 21.

⁵² For biblical instances, see Carl-Martin Edsman, “Fire,” in Eliade, *Encyclopedia of Religion*, V, 341b–342a.

⁵³ Ghazālī, *Iḥyāʾ*, IV, 530. See the similar tradition in Qurṭubī, *Tadhkirā*, 466, who speaks of canopies (*ẓulal*) of fire.

⁵⁴ *Ibid.*, 483.

people's faces,⁵⁵ and their sides and backs are branded (*yukwā*).⁵⁶ Ghazālī time and again points out that the touch of fire is the greatest pain that man can experience on earth, but that the fire of hell is not the same thing, but infinitely more painful.⁵⁷ A rather curious tradition, preserved in a number of collections, tells the story of a man who cries out to God from his stake in hellfire:

There is a man in the Fire whose cries are so loud that his voice is raised above that of any other of its inhabitants. He comes out, burned black, and God says to him: "Why is your voice louder than that of the other people in the Fire?" He replies, "O Lord! You have held me accountable [*ḥāsabtani*] but I have not given up hope of Your mercy!" So God says: "Who despairs of the mercy of his Lord save those who have gone astray? [Qur'ān 15:56] Go, for I have forgiven you!"⁵⁸

This tradition may serve to throw some light on the question of how otherworldly fire was conceived to be reflective of earthly fire, a problem raised, as was just mentioned, already by Ghazālī. The story of the believer who is saved from the Fire resonates rather eerily with an incident reported by the chronicler Ibn al-Jawzī for the year 530/1136, in which a Muslim woman was to be burned, "even though she was deemed good," in the square of Baghdad's Congregational Mosque. After the fire was kindled underneath her, the woman managed to free herself from her ordeal, jumping out of the fire naked (*kharajat al-mar'atu hāribatan 'uryānatan*), whereupon she was pardoned. Ibn al-Jawzī concludes his report with the laconic note that the fire had burned the woman only partially.⁵⁹

⁵⁵ Ibn Ḥanbal, *Musnad*, II, 62; al-Ḥākim al-Nisābūrī, *Mustadrak*, II, 382, 400, 496; Tirmidhī, *Sunan*, IV, 705; Muttaqī, *Kanz al-'ummāl*, II, 14. The spying slanderers are made to wear veils of fire on their faces: Asin, *La escatología*, 148.

⁵⁶ Muslim, *Ṣaḥīḥ*, II, 680, 683; Bayhaqī, *al-Sunan al-kubrā*, IV, 137, VII, 3; Ṭabarānī, *al-Mu'jam al-awṣat*, II, 309; Muttaqī, *Kanz al-'ummāl*, VI, 130; Qurṭubī, *Tadhkira*, 359–60.

⁵⁷ Ghazālī, *Iḥyā'*, IV, 531. However, fire in the Muslim hell is rarely purging. Instead, water is the prime substance of purification, splashed on the charred bodies of those who are admitted into paradise after a temporary sojourn in hell. See Tirmidhī, *Sunan*, IV, 713. Similar versions can be found in Ṣan'ānī, *Muṣannaḥ*, XI, 410; Bukhārī, *Ṣaḥīḥ*, V, 2500; Muslim, *Ṣaḥīḥ*, I, 170, 172. Zoroastrian ideas of an ordeal by fire at the end of time may still be an influence here, but are hardly more than vestiges. The polysemy of fire in ancient mythology, purifying in one instance, punitive in another, in the Islamic hell is more or less completely reduced to the latter aspect.

⁵⁸ Ghazālī, *al-Durra al-fākhira*, 100. Cf. the variants in Tirmidhī, *Sunan*, IV, 714; and Abū Nu'aym, *Ḥilyat al-awliyā'*, IV, 285. Those Muslims who are taken out of the Fire by the intercession of the Prophet are called *jahannamiyyūn* according to an isolated tradition in Tirmidhī, *Sunan*, IV, 715. Yūsuf b. Mūsā Abū l-Maḥāsīn al-Ḥanafī, *al-Mu'taṣar min al-mukhtaṣar min mushkil al-āthār* (Beirut: 'Ālam al-Kutub, [1976]), II, 364, comments: "They are called [with the *nisba* of] *jahannamiyyūn* even though they are not born in it, because they are its inhabitants. Abū Yūsuf has taught that he who lives in a place and makes it his homeland may be called among its inhabitants, contrary to Abū Ḥanīfa who argued that one's birthplace determines one's identity, not the places where one has moved to."

⁵⁹ Ibn al-Jawzī, *Muntaẓam*, XVII, 310.

The analogies are striking. Not only is the woman in Ibn al-Jawzī's story naked like the people punished in hellfire,⁶⁰ she is also burned *only partially*. This implies that she is not yet beyond salvation, that is, beyond the stage where the burnings can be undone. In fact, she resembles those people in eschatological *ḥadīths* who make it out of the fire and are thrown down next to the river of life (*nahr al-ḥayyāt*) to be washed clean from the black marks of fire by the inhabitants of paradise, "until they sprout forth like refuse born upon a torrent of mud."⁶¹ And, indeed, the woman in Ibn al-Jawzī's story was "deemed good" in nature, or in any case not totally corrupted like those who "dwell in the Fire everlastingly" (Qur'ān 2:39). Whether Ibn al-Jawzī, consciously or not, clad this event in eschatological terms, or whether in turn eschatological notions had determined the way in which the punishment was enacted, is, for the moment, not my concern. However, there can be little doubt about the close conceptual links between the ways in which people in the Saljūq period acted out punishment in *this* world and how they thought about punishment in the hereafter. During the pogrom in 494/1101 at Iṣfahān, Bāṭinīs were burned by the dozens in trenches filled with naphtha (*nīrān*). The man who was put in charge of these trenches was called Mālik by the people, in reference to the chief guardian-angel in hell.⁶²

Generally speaking, however, comparatively few descriptions name fire as the primary source of suffering in hell; more often, fire is only an accompanying feature of punishment, a kind of generic marker of punishment. Fire in hell is no doubt ubiquitous, but it is not the "source of all suffering," as has been claimed.⁶³ The actual punitive practices in hell are modeled after the punishments known from this world. Thus, while hell in Arabic is called simply *the Fire* (*al-nār*), below this layer of heat a great variety of punishments are carried out.

Death by decapitation, perhaps the most common form of execution in medieval Islam, is not foreign to hell.⁶⁴ Gibbeting is also mentioned,

⁶⁰ See below, p. 163.

⁶¹ Tirmidhī, *Sunan*, IV, 713. Similar versions appear in Ṣan'ānī, *Muṣannaf*, XI, 410; Bukhārī, *Ṣaḥīḥ*, V, 2500; Muslim, *Ṣaḥīḥ*, I, 170, 172.

⁶² Ibn al-Athīr, *Kāmil* (ed. Tornberg), X, 315, quoted in *MA*, VI, 194.

⁶³ El-Saleh, *La vie future*, 51. Cf. the discussions among the theologians as to how to punish the jinn, who are made of fire, or fallen angels, who are made of light, which is even hotter than fire. Iblīs, for example, is stuck in ice, according to Ibn 'Arabī. See Asín, *La escatología*, 171.

⁶⁴ Executioners in hell cut people's heads off with knives: Ṭabarī, *Jāmi' al-bayān* (ed. 1903), XXII, 82; El-Saleh, *La vie future*, 52; Asín, *La escatología*, 437 (as a punishment for murderers). Those who decapitated others in this world might well be decapitated in the next, for the beheaded person would seek talionic justice from God on the Day of Judgment. See the "Chapter on *qisās* on the Day of Judgment," in Qurṭubī, *Tadhkira*, 322–33. According to one tradition, a man will step before the Throne with his head in his hand, accusing his murderer: "O Lord! Ask this man why he killed me!" See Nasā'ī, *Sunan*, II, 286, IV, 216; Ibn Ḥanbal, *Musnad*, I, 222, 240, 294, 364, passim; Qurṭubī, *Tadhkira*, 337; Muttaqī, *Kanz al-ummāl*, XV, 10, 12, 17; Ṭabarī, *Jāmi' al-bayān* (ed. Beirut), V, 218, XXIII, 148; Suyūṭī, *al-Durr al-manthūr*, II, 624.

including on trees of fire,⁶⁵ or columns of fire,⁶⁶ and some people are fastened to wheels of fire (*na'ūrā*), spinning endlessly.⁶⁷ As for stoning, the *zabāniyya* sit on people's chests, smashing their heads with big stones. The stone then rolls away and the heads regain their former shape.⁶⁸ Rocks of fire rain down on the sinners, crushing their heads.⁶⁹ In addition, people are made to fall down mountain cliffs, especially down the mountain *ṣa'ūd*, pushed by the guardians of hell into valleys of fire.⁷⁰ The damned, as they try to cross the Bridge that leads into paradise, topple over and fall, "head first towards hell, with their feet uppermost."⁷¹ This includes sodomites who are made to carry their male lovers over the Bridge, inevitably stumbling and falling into the infernal funnel⁷² – a motive reminiscent of the way in which those convicted of sodomy in the Islamic Middle Ages were sometimes executed, that is, by making them fall to their death from minarets.⁷³ Finally, to conclude the catalogue of executionary practices in hell, let us mention drowning and trampling by animals.⁷⁴

As for non-lethal punishments of the body, torture, not surprisingly, appears in all forms and varieties.⁷⁵ People are tied up in torturous ways, their left hand being chained to their neck.⁷⁶ They are hung up with ropes,

⁶⁵ Ṭabarī, *Jāmi' al-bayān* (ed. 1903), XXII, 82; El-Saleh, *La vie future*, 52.

⁶⁶ Qurṭubī, *Tadhkira*, 297; Asín, *La escatología*, 437 (for those who do not pray).

⁶⁷ Qurṭubī, *Tadhkira*, 489.

⁶⁸ Ṭabarī, *Jāmi' al-bayān* (ed. Beirut), XV, 7; Tha'labī, *Tafsīr*, VI, 57; Asín, *La escatología*, 428 (for "those who use the Qur'ān as a pillow but do not living according to it").

⁶⁹ Qāḍī, *Daqā'iḳ al-akhbār*, 68–9.

⁷⁰ Tirmidhī, *Sunan*, IV, 703, V, 429; Qurṭubī, *Tadhkira*, 484; Muttaqī, *Kanz al-'ummāl*, II, 7. See also El-Saleh, *La vie future*, 51. Others are thrown from the roof of the castle of *hawā'*: Qurṭubī, *Tadhkira*, 486.

⁷¹ Ghazālī, *Ihyā'*, IV, 530.

⁷² 'Ubayd-i Zākānī relates an anecdote about Sulṭān Maḥmūd of Ghazna (r. 988–1030) in which a preacher threatens sodomites in this way. See Niẓām al-Dīn 'Ubayd-i Zākānī, *Kulliyāt* (Tehran: Intishārāt-i Zawwār, 1382/[2003–4]), 429; also quoted in Stephen O. Murray, "The Will Not to Know: Islamic Accommodations of Male Homosexuality," in Murray and W. Roscoe, *Islamic Homosexualities: Culture, History, and Literature* (New York: New York University Press, 1997), 21.

⁷³ Ibn al-Jawzī, *Muntaẓam*, XVIII, 33. Note that pushing someone into a pit headfirst was not an unknown practice in the temporal world. Mazdak's followers, as recounted by the Saljūq vizier Niẓām al-Mulk, were stuffed into holes in the ground (*chāh*). See Niẓām al-Mulk, *Sīyāsatnāma*, 224.

⁷⁴ People trying to reach the shores of a river of blood are driven back into the river by the guardians of hell. See Bukhārī, *Ṣaḥīḥ*, I, 466; Qushayrī, *K. al-Mī'rāj*, 40; Asín, *La escatología*, 428 (for those who practice usury). Others are adrift in seas of fire: Qurṭubī, *Tadhkira*, 489.

⁷⁵ For illustrations, see the Uighur *mī'rāj* manuscript reproduced in Séguy, *The Miraculous Journey of Mahomet*.

⁷⁶ Qāḍī, *Daqā'iḳ al-akhbār*, 66. See the pictorial representations of this practice in the Uighur *mī'rāj* manuscript reproduced in Séguy, *The Miraculous Journey of Mahomet*. Perhaps the instrument called *pālhang* that Ibn Bībī mentions was also a device by means of which the hands of prisoners could be fastened to their necks. See his *Saljūqnāma* (tr. Duda), 74, 167, 170.

dangling down from their feet, calves, or Achilles tendons,⁷⁷ women also from their breasts or hair, and false witnesses from their tongues.⁷⁸ Others are imprisoned in heavy iron coffins (*tawābīt*) on the lowest level of hell.⁷⁹ These boxes of fire are sometimes shut with nails of fire that point inwards and penetrate the sinner's face and body.⁸⁰ This torture box, a sort of iron maiden, bears similarity with the nail-speckled device crafted at the behest of the 'Abbāsid vizier Ibn al-Zayyāt (r. 221/833–233/847).⁸¹ Others are forced to drink boiling liquids, such as the one called *ḥamīm* (see Qur'an 6:70 and *passim*), eat stones, bitter fruits, pieces of rotten meat, or even strips cut from their own bodies.⁸²

Maiming and cutting of body parts is a commonplace notion. Lips are cut with scissors.⁸³ The corners of the mouths are ripped open, or are even slit back all the way to the neck with harpoons (*kalālīb*).⁸⁴ Professional singers and mourners, "braying like donkeys and barking like dogs," have their tongues cut out by the *zabāniyya*.⁸⁵ Others have their eyes gouged out and ears mutilated.⁸⁶ In fact, blinding is among the most common torture practices in hell, blindness being one of the general conditions of its denizens.⁸⁷ Eyes, in the symbolic language of the Qur'an (see 5:83, 90:8), express spiritual insight;⁸⁸ the absence of sight is thus a fitting attribute for those punished in the Fire. The sinners' eyes are pierced with nails of fire, a relative of the Persian *mīl kashīdan*, practiced under the Saljūqs and throughout the Islamic Middle Ages.⁸⁹ Maiming could also come in the form of branding. The

⁷⁷ Ṭabarī, *Tahdhīb al-āthār*, I, 429; Abū Bakr Muḥammad Ibn Khazīma al-Sulamī al-Nisābūrī, *Ṣaḥīḥ* (Beirut: al-Maktab al-Islāmī, 1390/1970), III, 237; Ṭabarānī, *al-Muʿjam al-kabīr*, VIII, 156.

⁷⁸ Ṭabarī, *Tahdhīb al-āthār*, I, 429; Ṭabarānī, *al-Muʿjam al-kabīr*, VIII, 157; Qushayrī, *K. al-Mīrāj*, 47. Cf. Asín, *La escatología*, 436.

⁷⁹ Ṭabarānī, *al-Muʿjam al-kabīr*, IX, 208; Qurṭubī, *Tadhkira*, 461; 'Aynī, *Umdat al-qārī*, XVIII, 193, XXII, 218.

⁸⁰ Ibn al-Jawzī, *Dhamm al-hawā*, 215.

⁸¹ Anon., *Tuḥfat al-wuzarā*, 25; Tanūkhī, *Nishwār al-muḥāḍara* (tr. Margoliouth), 12; *EI2*, s.v. Ibn al-Zayyāt, III, 974b (D. Sourdel). Cf. p. 76.

⁸² Ṭabarī, *Tahdhīb al-āthār*, I, 429; Ṭabarī, *Jāmiʿ al-bayān* (ed. Beirut), XV, 7; Tha'labī, *Tafsīr*, VI, 57.

⁸³ Tha'labī, *Tafsīr*, VI, 57; Ṭabarī, *Jāmiʿ al-bayān* (ed. Beirut), XV, 7; Muttaqī, *Kanz al-ummāl*, XI, 179.

⁸⁴ Bukhārī, *Ṣaḥīḥ*, I, 466; Ibn Khazīma, *Ṣaḥīḥ*, III, 237; Qushayrī, *K. al-Mīrāj*, 40; Asín, *La escatología*, 425, 428.

⁸⁵ Asín, *La escatología*, 436. The insult "May God cut off your tongue!" may also be understood to refer to a punishment in the hereafter. For examples, see *MA*, I, 105–7.

⁸⁶ Ṭabarānī, *al-Muʿjam al-kabīr*, VIII, 155; Muttaqī, *Kanz al-ummāl*, XIV, 227; Ibn 'Asākir, *Tārīkh madīnat Dimashq*, XXIX, 331.

⁸⁷ Qurṭubī, *Tadhkira*, 482. According to the same tradition, those who were blind on this earth are the first to enter paradise.

⁸⁸ *EQ*, s.v. Anatomy (Qamar al-Huda).

⁸⁹ El-Saleh, *La vie future*, 50 (from Samarqandī, *Qurraṭ al-uyūn*, 28). Cf. p. 28. According to Ma'arrī, Bashshār b. Burd, the famous cynic poet who claimed he was lucky to be blind, since this spared him the sight of his fellow men, is punished in the reverse: the *zabāniyya* keep his eyes open with hooks of fire (*kalālīb min nār*), so that he is forced to witness the torment of the denizens of hell. See Ma'arrī, *Risālat al-ghufrān*, 302.

Qurʾān (18:29) speaks of water like molten lead with which the inhabitants of hell will be showered. This led people to imagine that the denizens of hell would be branded with red-hot irons, or that their fronts would be branded by molten metal.⁹⁰ Next to maiming, flogging also occupies an important place among the punitive practices in hell. The sinners are beaten with whips of fire, their backs are flagellated with clubs of fire, iron staffs (*mirzabba*), or the iron rods (*maqāmiʿ*) mentioned in the Qurʾān.⁹¹

Structuralist functions of the imaginaire of hell

This horrific catalogue of infernal punishments may appear unpleasant or even revoltingly violent. However, I have not listed hell's tortures to demonstrate the crude taste or the morbid imagination of Muslim eschatologists. This study argues that representations of violence in the eschatological literature of the Islamic Middle Ages served purposes beyond the titillation of an audience driven by base instincts, or by a naïve trust in a distant future. They were more than mere inventions of pathologically creative minds, or of those selling opium to the people. In fact, it seems likely that these representations helped to instill in people a notion of immediate order in a universe that otherwise, perhaps, seemed intolerably chaotic.

Not only the physical structure of hell but also the punishments therein are basically modeled after this-worldly realities. As one tradition puts it, “the dead is pained in his grave by the same things that pain a living man,”⁹² and the same appears to hold true for punishment in hell. Both in real life and in hell, people were subjected to gibbeting, execution by the sword, stoning, drowning, burning, being thrown off cliffs or buildings, trampling by animals, maiming, torture, flogging, exile, banishment, and (as remains to be shown in more detail) shaming punishments. Some of the practices are not just similar as general types, but seem to coincide even when it comes to details. The historian Valentin Groebner, meditating on the function of medieval Christian representations of the crucified Jesus, points out that

[t]he image of the tortured naked man on the Cross could be read . . . as an allusion to actual executions and rituals of punishment. Detailed religious representations of torment and physical pain referred to very real contemporary violence. The aim was not simply to arouse pity but also to chill the blood of those who might consider

⁹⁰ El-Saleh, *La vie future*, 50 (from Samarqandī, *Qurraṭ al-ʿuyūn*, 70). In ancient Iran, molten copper used to be poured over the bare breast of the accused person to prove his innocence. See Mary Boyce, *Zoroastrians: Their Religious Beliefs and Practices* (London: Routledge, 1979), 9, 118. For a Zoroastrian vision of hell from the Saljūq period, see Zartusht-i Bahrām, *Ardāvīrāfnāma-yi manzūm* (Mashhad: Dānīshgāh-i Mashhad, 1343sh./[1965]). I owe this reference to Vahid Behmardi.

⁹¹ Tabarī, *Jāmiʿ al-bayān* (ed. 1903), XXII, 82; El-Saleh, *La vie future*, 50 (from Samarqandī, *Qurraṭ al-ʿuyūn*, 10); Abū Nuʿaym, *Ḥilyat al-awliyāʾ*, IV, 10–11; Qāḍī, *Daqāʾiq al-akhbār*, 66; Qurṭubī, *Tadhkira*, 471.

⁹² Ghazālī, *al-Durra al-fākhira*, 29.

themselves in the safe position of onlookers, thinking to themselves, It is not I; it is [just] a picture.⁹³

If one rephrases this statement and applies it to our context, one may hypothesize that depictions of the tortured inhabitants of hell, expressed in the eschatological traditions current at the time, were “an allusion to actual executions and rituals of punishment.” Indeed, what people in the Saljūq period learned and heard about the details of physical pain in the hereafter could be taken to refer to “very real contemporary violence.” The function of Muslim eschatological literature was not simply to arouse fear of the individual’s fate in the hereafter but also to channel the feeling of impermanence of life in *this* world, and of the individual’s utter dependence on the punitive measures of this-worldly authorities.

Groebner, in the passage quoted above, puts his emphasis a little differently, namely, on the fact that the individual onlooker may have felt reassured that such representations were only “images,” not things that were likely to happen to him or her in real life. However, beyond such considerations, it appears that these representations offered a discourse in which the terrifying reality of temporal punishment could be expressed and discussed in terms of an other-worldly punishment that was also impending, but still a little less immediately threatening. This, I submit, was a key function of the medieval Muslim *imaginaire* of hell: to put at the believers’ disposition an arsenal of categories of thought. To borrow a much-used phrase of Lévi-Strauss, depictions of punishment in hell were not merely useful in arousing extreme fear, or in reassuring a chilled audience with promises of future justice, but, rather, they were “good to think with.” By offering a structured setting for the unsettling phenomenon of violence, descriptions of the tortures in hell helped people think about their everyday lives in a society over which hung, as I have shown in part I of this study, the constant spectre of extreme punishment.

In addition to the ascetic-psychological function discussed in chapter 3, I have thus enunciated what could be termed hell’s structuralist function. However, representations of hell should not be reduced to either of these two functions. If, as I maintain, the specific strength of *Religionswissenschaft* is methodological pluralism, other approaches to the Muslim imagination of hell should be explored. Other factors may have favored the growth and popularity of the eschatological idiom. It is to these factors that I turn next.

Didactic dimensions of the Muslim hell

Descriptions of sinners in hell contributed to establishing a moral hierarchy among people in this world, and could serve as a potent critique of certain

⁹³ Groebner, *Defaced*, 104.

social classes,⁹⁴ for locating certain social groups in hell (both as victims and victimizers) carried a powerful message as to their moral rank in this world. This raises the question: who is put in hell by whom, and why? In seeking an answer to this question, let us guard against easy imputations of ideology. The “hermeneutics of suspicion” approach has taught us to be wary of the implicit power claims of social groups that are transported into, and conveyed to others by, literary texts.⁹⁵ However, there is the danger of seeing ideology everywhere. As Gregory puts it in his study of medieval Christian notions of salvation and the afterlife, “[f]or them [medieval Christians] hell was no ‘ideological construct,’ but a terrifying prospect for souls stained by sin, a danger magnified by thoughtless indifference.”⁹⁶ Taking Gregory’s reminder to apply to Muslim eschatological literature, we have no reason to doubt that literary depictions of hell could be honest expressions of scrupulous attention to Islamic morality. It would be reductive to claim that the pathos of ascetic self-criticism voiced by such writers as Muḥāsibī and Ibn Abī l-Dunyā merely served these writers to promote the interest of their respective social power group.

At the same time, however, there can be little doubt that eschatological traditions do reflect certain power relations. The difficulty is how to unravel the different strands of authorship. A recent study of the *isrāʾ* tradition views the reports about the Prophet’s visit to heaven and hell as statements made by “the élite medieval scholars.”⁹⁷ However, not only are the *‘ulamā* a rather diffuse group in themselves, but also the question of authorship may be more complicated, especially if one is to acknowledge the existence of a “popular” stratum of eschatological traditions. Muslim eschatology is a hybrid with multiple layers of transmission and of meaning, as indeed “the history of accumulated layers of eschatological tradition is . . . perplexing.”⁹⁸ To trace traditions to the sociopolitical context in which they originate is a thorny and difficult enterprise, and in accordance with the synchronic approach adopted in this study I must leave the question of origins aside.⁹⁹ Here I will talk only of certain types of traditions about the punished, and I will tentatively outline who were the various interest groups that facilitated the survival, into the Saljūq period and beyond, of these traditions.

Common people in hell

Three classes of sinners in hell are the primary target of the eschatologists’ scorn. In broad strokes, these three groups reflect the three-tiered model of

⁹⁴ This point has been made with reference to apocalyptic literature by David Cook, “Moral Apocalyptic in Islam.”

⁹⁵ See, for example, Paul Ricoeur, *Freud and Philosophy: An Essay on Interpretation* (New Haven: Yale University Press, 1970), 28–36.

⁹⁶ Gregory, *Salvation at Stake*, 14. ⁹⁷ Vuckovic, *Heavenly Journeys, Earthly Concerns*, 120.

⁹⁸ Thus, Jane Idleman Smith (tr.) in Ghazālī, *al-Durra al-fākhira*, 97 n. 42.

⁹⁹ See the introduction.

medieval Islamic society: the common people, the learned religious establishment, and the rulers and their representatives.¹⁰⁰ Threats of punishment in hell against commoners are formulated in reaction to a wide range of offenses. To be sure, many of these threats are directed against the profligates of *all* social classes, not only the lower strata. But let us recall that the fire-and-brimstone preachers and popular transmitters of traditions about hell spoke primarily, albeit not exclusively, to the masses. Since the plethora of grave sins and their detailed punishment in the *isrāʾ* accounts must have corresponded to some actual social phenomena, eschatology could well serve as a moral catechism for the lower classes. There is some resemblance, then, between this kind of literature and the didactic genre of “books of cursing” (*Kutub al-dhamm*), which is known through a number of works, such as the ones by Ibn Abī l-Dunyā,¹⁰¹ ʿĀjurrī’s (d. 360/970) *K. dhamm al-liwāṭ* (“Cursing of Sodomy”),¹⁰² and, perhaps the most famous, Ibn al-Jawzī’s *K. dhamm al-hawā* (“Cursing of Erotic Love”),¹⁰³ to name only a few of those written before or in close proximity to the Saljūq period.¹⁰⁴ There is a

¹⁰⁰ One might expect to find traditions locating the *sūfis* in hell too, but this is, as far as I can see, rarely the case. One may hypothesize that most of the eschatological material was put into circulation before the formation and spread of the mystical orders (*ṭariqas*), a process that began to unfold roughly in the second half of the Saljūq period. Ghazālī, *al-Durra al-fākhira*, 82, takes care to point out that the gnostics (*ʿarifūn*) are among those who cross the Bridge of *ṣirāṭ* into paradise, but little can be found besides this isolated reference in the literature of Saljūq and pre-Saljūq times.

¹⁰¹ See the following “books of cursing” attributed to Ibn Abī l-Dunyā: *Dhamm al-muskir* (“Cursing of Intoxicants”; Riyadh: Dār al-Rāya, 1989); *Dhamm al-baḡhy* (“Cursing of Revolt”; Riyadh: ʿAbd al-Raḥman Khalaf, 1988); *Dhamm al-dunyā* (“Cursing of the World”; Cairo: Maktabat al-Qurʾān, 1988); *Dhamm al-ghayba wa-l-namīma* (“Cursing of Libel and Slander”; Cairo: Maktabat al-Turāth al-Islāmī, [1989]); *Dhamm al-kadhib wa-ahlīhi* (“Cursing of Lying and of Those Who Practice It”; Beirut: Dār al-Sanābil, 1993); *Dhamm al-malāḥī* (“Cursing of Entertainment”; Beirut: Muʾassasat al-Kutub al-Thaqāfiyya, 1993). See also Muḥammad b. Khalaf Ibn al-Marzubān (d. 309/921), *Dhamm al-thuḡalāʾ* (“Cursing of Unpleasant People”) (Cologne: Manshūrāt al-Jamal, 1999); ʿAbd Allāh b. Muḥammad al-Anṣārī al-Harawī, *K. Dhamm al-kalām* (“Cursing of Speculative Theology”) (Beirut: Dār al-Fikr al-Lubnānī, 1994).

¹⁰² Abū Bakr Muḥammad b. al-Ḥusayn al-ʿĀjurrī, *Dhamm al-liwāṭ* (Cairo: Maktabat al-Qurʾān, [1990]).

¹⁰³ Ibn al-Jawzī, *Dhamm al-hawā*. This work has been studied by Stefan Leder in *Ibn al-Ġawzī*.

¹⁰⁴ Later collections may well contain traditions that were circulating earlier. See Ibn ʿAsākir’s *K. Madḥ al-tawāḍuʿ wa-dhamm al-kibr* (“Praise of Modesty and Cursing of Haughtiness”); Ibn ʿAsākir, *Dhamm man lā yaʿmalu bi-ʿilmīhi* (“Cursing of Those Who Do Not Do What They Know [to Be Right]”) (Damascus: Dār al-Maʿmūn li-l-Turāth, 1990); Muwaffaq al-Dīn Abu Muḥammad ʿAbd Allāh b. Aḥmad al-Muqaddasī (d. 620/1223) Ibn Qudāma, *Dhamm al-taʾwīl* (“Cursing of Esoteric Qurʾān Exegesis”) (al-Jahrāʾ: Dār Ibn al-Athīr, 1995); Ibn Qudāma, *Dhamm al-waswās* (“Cursing of Prying”) (Damascus: Maktabat al-Fārūq, 1990); Muḥammad b. Abi Bakr Ibn Qayyim al-Jawziyya, “K. Dhamm al-ḥasad wa-ahlīhi” (“Cursing of Envy”), a chapter in his *Badāʾiʿ al-fawāʾid* (Amman: Dār al-Qabas, 1986); Ibn Qayyim al-Jawziyya, “K. Dhamm al-hawā wa-ittibāʾihi” (“Cursing of Erotic Love and of Those Who Practice It”), a chapter in his *Rawdat al-muḥibbīn* (Amman: al-Maktaba al-Islāmiyya, 1988); Suyūṭī, *Dhamm al-maks* (“Cursing of Taxing”) (Ṭanṭā: Dār al-Ṭabāʾa li-l-Turāth, 1991).

lot of talk about punishment of sinners in these books. However, they often appear to have been written for a slightly more educated audience; this would help to explain why in general they are less graphic and detailed than descriptions of punishment in the eschatological literature, including the *isrā'* traditions.

In order to avoid repetition of the grave sins enumerated at the beginning of this chapter, I will deal with eschatological threats directed against a general audience only in summary fashion. The standards of Islamic morality are vigorously defended in eschatological writings. Consumption of alcoholic beverages is an important concern. *Isrā'* accounts tell of wine-imbibers who are made to drink from goblets of fire, their intestines coming out of their anuses.¹⁰⁵ Moral puritanism also found expression in threats against sexual offenders. “The biggest sin after *shirk* is to put a sperm into a womb that is not *ḥalāl*,” the Prophet is reported to have said.¹⁰⁶ Previously it has been noted that in theory grave sinners are eligible for salvation after atoning for their sins by a temporary sojourn in hell. However, a tradition reported by Ibn al-Jawzī condemns fornicators to eternal hellfire.¹⁰⁷ The concern with purity is clearly discernible in the fornicators’ punishments, of which there are plenty.¹⁰⁸ As for sodomites, their punishment is severe: they are impaled on stakes of fire, or they are eaten up by an interior fire that enters their bodies through the anus.¹⁰⁹ If drunkards and sexual offenders receive the most attention, other groups are also subjected to the moral hegemony of the eschatologist. Misogynous statements are not uncommon, as is attested by the infamous *ḥadīth* that “most of the people in the Fire are

¹⁰⁵ Asin, *La escatología*, 436. They will suffer thirst, but all they will be given is the boiling liquid called *ḥamīm*. See Qāḍī, *Daqā'iq al-akḥbār*, 71. Similarly, the person who gives up drinking and then goes back to his former habit will be made to drink the *ḥamat al-khabāl* in hell, which is the pus of the people of the Fire. See Muslim, *Ṣaḥīḥ*, III, 1587; Nasā'ī, *Sunan*, III, 230; Ibn Abī I-Dunyā, *Dhamm al-muskir*, 62–3; Ibn Kathīr, *Tafsīr*, IV, 39; Suyūṭī, *al-Durr al-manthūr*, III, 175. Even martyrs, before they enter paradise, will suffer the *ḥadd* of lashing if they were drunkards. See Ibn Abī I-Dunyā, *Dhamm al-muskir*, 82.

¹⁰⁶ Ibn al-Jawzī, *Dhamm al-hawā*, 201; Suyūṭī, *al-Durr al-manthūr*, V, 281; Muttaqī, *Kanz al-'ummāl*, V, 125.

¹⁰⁷ Ibn al-Jawzī, *Dhamm al-hawā*, 201. Ibn al-Jawzī adds “except if God wills differently.”

¹⁰⁸ Fornicators in hell have repulsive looks and clothes, and they exude a disgusting stench. Pus flows from their odorous genitals (*furūj*). See Qurṭubī, *Tadhkira*, 496; Ghazālī, *al-Durra al-fākḥira*, 65; Qushayrī, *K. al-Mī'rāj*, 40. They are surrounded by a terrible stench “like that of latrines.” See Ṭabarānī, *al-Mu'jam al-kabīr*, VIII, 156; Ibn Khazīna, *Ṣaḥīḥ*, III, 237; Ibn al-Jawzī, *Dhamm al-hawā*, 202. As a punishment mirroring their sin, the married adulterers eat rotten meat even though they are offered a choice of well-cooked meat. See Ṭabarī, *Jāmi' al-bayān* (ed. Beirut), XV, 7; Tha'labī, *Tafsīr*, 57.

¹⁰⁹ Qushayrī, *K. al-Mī'rāj*, 40. Also see anon., *Baḥr al-fawā'id* (tr. Meisami), 103, who reports the tradition that “he who kisses a slave-boy lustfully will be imprisoned in Hell for a thousand years; and if he embraces him, he will have no hope of Paradise,” and similar traditions. *EI2*, s.v. *Liwāṭ*, V, 777a (C. Pellat et al.) relates a tradition from 'Abd Allāh b. 'Umar that the *lūṭiyyūn* will be resurrected in the form of monkeys and pigs.

women.¹¹⁰ Suicides find equally sweeping condemnation: “Whoever kills himself with a sharp knife,” says a *ḥadīth* considered to be authentic (*ṣaḥīḥ*), “will be found on the day of resurrection with it in his hand, stabbing himself in the belly in the fire of Jahannam where he will remain eternally.”¹¹¹

Besides these rather general threats one gets a more concrete sense of day-to-day social life in a number of other traditions. One important area of concern is the behavior of people in mosques. Included among the damned are “those who speak of worldly matters in the mosques,”¹¹² those who sleep during the evening prayer,¹¹³ and those who pray without performing the proper ablutions after urinating.¹¹⁴ Let us also recall that some authors declare entering the bath-house without a loincloth and playing backgammon (*nard*) or chess among the grave sins.¹¹⁵ As for other common ethical standards of communal life, the eschatologists predict punishment for those who slander others,¹¹⁶ who are overly curious,¹¹⁷ or who utter an insult, that is, a “great word [*kalima ‘aẓīma*].”¹¹⁸ This list could be continued.¹¹⁹

Men of religion in hell

Pious reactions against religious scholars who abused their influential positions have a long tradition in Islam.¹²⁰ The Saljūq period, with the formation

¹¹⁰ Ṣan‘ānī, *Muṣannaḥ*, III, 98, XI, 305–6; Bukhārī, *Ṣaḥīḥ*, I, 19, 357, III, 1184, V, 1994–5, V, 2369, 2397; Muslim, *Ṣaḥīḥ*, II, 626, IV, 2096; Ibn Ḥanbal, *Musnad*, I, 298, 358, 376, 423, passim; Qurṭubī, *Tadhkira*, 446. See also *ibid.*, 442, where punishment is predicted for “women who are dressed and [yet] naked, inclining . . . their heads like the bumps of a she-camel that is slanted.” A particularly violent imagination directed against women is at work in a *mīrāj* version attributed to Ibn ‘Abbās. See Ṭu‘mī, *Mawsū‘at al-isrā’ wa-l-mīrāj*, 18–20. The misogynist attitude in this account is blatant, but I can find no such violent imagination in the standard *mīrāj* versions of the *tafāsīr*. The editor Ṭu‘mī does not think it necessary to indicate his source, and thus I have not included this account in my analysis. Cf. Norman Calder’s remarks on the *mīrāj* attributed to Ibn ‘Abbās in *Classical Islam*, 19. Calder points out that “one can see the role of the popular preacher in the development of such accounts,” thus highlighting the patchwork character of the Ibn ‘Abbās account, and of *mīrāj* stories in general.

¹¹¹ Bukhārī, *Ṣaḥīḥ*, I, 459, V, 2179, 2247; Abū ‘Awāna Ya‘qūb b. Ishāq al-Isfarā‘īnī, *Musnad* (Beirut: Dār al-Ma‘rifa, n.d.), I, 49; Ibn Ḥanbal, *Musnad*, II, 254, 478, 488; Ghazālī, *al-Durra al-fākhira*, 36. Cf. Rosenthal, “On Suicide in Islam,” 244.

¹¹² Qāḍī, *Daqa‘iq al-akhbār*, 70. ¹¹³ Qushayrī, *K. al-Mīrāj*, 40, 47.

¹¹⁴ Qurṭubī, *Tadhkira*, 497. ¹¹⁵ Marghinānī, *Hidāya*, III, 123.

¹¹⁶ Qushayrī, *K. al-Mīrāj*, 40; Tha‘labī, *Tafsīr*, VI, 57.

¹¹⁷ Ṭabarānī, *al-Mu‘jam al-kabīr*, VIII, 156.

¹¹⁸ Ṭabarī, *Jamī‘ al-bayān* (ed. Beirut), XV, 7; Tha‘labī, *Tafsīr*, VI, 57.

¹¹⁹ A special case is constituted by “those who fashion images,” who, according to a well-known *ḥadīth*, are among those most severely punished. See Ṣan‘ānī, *Ṣaḥīḥ*, X, 398; Ibn Ḥanbal, *Musnad*, I, 308; Muslim, *Ṣaḥīḥ*, III, 1670; Muḥammad b. Fattūḥ al-Ḥumaydī, *al-Jam‘ bayna l-ṣaḥīḥayn* (Beirut: Dār Ibn Ḥazm, 1423/2002), I, 218, II, 70; Qurṭubī, *Tadhkira*, 496; Daylamī, *Firdaws al-akhbār* (ed. Zaghlūl), III, 250. Cf. Rudi Paret, “Textbelege zum islamischen Bilderverbot,” in Hans Fegers (ed.), *Das Werk des Künstlers: Hubert Schrade zum 60. Geburtstag* (Stuttgart: Kohlhammer, 1960), 36–48.

¹²⁰ Mez, *Renaissance*, 217–23.

of the *madrasa* system, saw an institutional consolidation of the class of *‘ulamā*. Reports threatening the *‘ulamā* with punishment in the hereafter challenged their claims to authority. Daylamī records a tradition from the Companion Mu‘ādh b. Jabal according to which the men of religion who mingle with the sultān for earthly gains are punished in hell.¹²¹ According to another tradition, they turn into monkeys and pigs, while their faces are blackened and their eyes become blue.¹²² Again Mu‘ādh b. Jabal is alleged to have taught that the first layer through the seventh layer of hell, respectively, are the realms of punishment for the scholar (*‘ālim*)

who is harsh in his admonitions and reacts haughtily when he is admonished . . . who uses his knowledge in the service of worldly power . . . who hoards his knowledge . . . who reserves his knowledge and speech for the well-born among the people and is inaccessible to the low people . . . who learns speculative theology [*kalām*] from the Jews or Christians and from their traditions, thereby strengthening their traditions . . . who devotes himself to giving *fatwās* and says to the people “ask me!” – he is considered by God to be impertinent [*mutakallif*], “who does something forcedly”, and God does not love the *mutakallifin* . . . and who takes knowledge [only] out of [a sense of] manliness or [to satisfy his] intellect [*man yattakhidhu l-‘ilma murī‘atan aw ‘aqlan*].

It is remarkable that this tradition is preserved by Qurṭubī, who was a religious scholar himself, even though he makes it clear that “this is reported by none of the *‘ulamā*.”¹²³ On the other hand, he also cites the tradition that “God will forgive the unlettered [*ummiyyūn*] things that he will not forgive the *‘ulamā*.”¹²⁴ Perhaps Qurṭubī is simply reminding his learned colleagues that higher ethical standards apply to their behavior. A subgroup of religious scholars, the preachers, are likewise attacked: during his night journey, the Prophet is reported to have seen people whose lips are cut with scissors of fire, then again restored to their former shape. “These,” he is told, “are the preachers of your community who said what they themselves did not adhere to and read the Book of God without practicing it.”¹²⁵ According to another tradition, in hell there are evil *‘ulamā* enveloped by winds, “because they have taught people the divine command and have themselves acted against it.”¹²⁶ Dhahabī mentions false sermons as the twenty-fifth of his seventy “grave

¹²¹ Daylamī, *Firdaws al-akhbār* (ed. Zaghlūl), I, 289; Muttaqī, *Kanz al-‘ummāl*, X, 85. More traditions that are critical of the *‘ulamā* appear in Daylamī, *Firdaws al-akhbār* (ed. Zaghlūl), I, 276; “If you see an *‘ālim* often mingle with the sultān, know that he is a thief!”, III, 75; “The *‘ulamā* are the stewards of the prophets for the people, as long as they do not mingle with the sultān.”

¹²² David Cook, “Moral Apocalyptic in Islam,” 55–6.

¹²³ Qurṭubī, *Tadhkira*, 462; Muttaqī, *Kanz al-‘ummāl*, X, 82. ¹²⁴ Qurṭubī, *Tadhkira*, 499.

¹²⁵ Ibn al-Jawzī, *K. al-Quṣṣāṣ wa-l-mudhakkirīn* (Beirut: Dār al-Mashriq, 1971), 40; Qurṭubī, *Tadhkira*, 499; Muttaqī, *Kanz al-‘ummāl*, X, 85, XI, 179.

¹²⁶ Daylamī, *Firdaws al-akhbār* (ed. Zaghlūl), I, 220–1; Qurṭubī, *Tadhkira*, 488.

sins." Hell is filled with corrupt judges,¹²⁷ hypocritical Qur'an readers, and all "scoundrels who carry the Qur'an around with them."¹²⁸

A different strand of authorship appears to be at work in the redaction of these traditions. While occasionally the religious elite may have tried to rein in the loosening of morals among their own ranks by circulating such traditions, it appears more likely that they originate in a different segment of society. No wonder that this material was not known as widely (and therefore to this day is more difficult to locate in the sources), or that "none of the *ulamā*" related it (with the exception of a few, for example Qurṭubī). Traditions that consign the *ulamā* to hell manifest a measure of resentment against the religious professionals. They are instances of a subversive kind of social discourse, a discourse which people use to "talk back" to those claiming moral superiority.

Rulers and their representatives in hell

A similar subtext of resentment against those in positions of authority underlies eschatological reports about a third group of social actors, the one constituted by the ruler and government agents.¹²⁹ Perhaps the most unequivocal statement placing these people in hell is that "the policemen [*al-shuraṭ wa-l-jalāwīdhā*]¹³⁰ and the helpers of tyranny are the dogs of hell [*kiḷāb al-nār*]." This is not a tradition that is considered a sound Prophetic *ḥadīth* by Muslim scholars, but it appears in influential collections such as Abū Nu'aym al-Ḥifāhānī's (d. 430/1038) *Ḥilyat al-awliyā'*, and in the works of Daylamī (d. 509/1115), Qurṭubī (d. 671/1272), and al-Muttaqī al-Hindī (d. 975/1567).¹³¹ The tradition can be understood in at least three different ways:

¹²⁷ See Baber Johansen, "La corruption: un délit contre l'ordre sociales *qāḍī-s* de Bukhāra," *Annales* 57, 6 (2002), 1567.

¹²⁸ Qurṭubī, *Tadhkira*, 488. See also Daylamī, *Firdaws al-akhbār* (ed. Zaghlūl), II, 49; Muttaqī, *Kanz al-ummāl*, XI, 179.

¹²⁹ On this theme, see David Cook, "Moral Apocalyptic in Islam," 50.

¹³⁰ The term *jilwāz* (pl. *jalāwīza*) has different meanings in different contexts. Zamakhsharī, *al-Fā'iḳ* (2nd ed., Beirut: Dār al-Ma'rifa, n.d.), II, 72, states that "the *jilwāz* is a policeman [*shurṭī*] who is called thus if he is an Arab because of his severity and violence [*tashdīduhu wa-unfuhu*]." According to Ibn Sīda, *al-Muḥkam*, IX, 509, the *jilwāz* (or its synonym *tu'rūr*) is "a helper of the sulṭān who is not his property [*bi-lā rizqin*]." Cf. *ibid.*, X, 172, stating that *tu'rūr* is a Persian word. Muṭarrizī, *al-Mughrib fī tartīb al-murīb*, I, 153, states that, in legal parlance, the *jilwāz* is the chamberlain (*amin*) of the *qāḍī*, also called *ṣāhib al-majlis*. Cf. in this sense Hallaq, *The Origins and Evolution of Islamic Law*, 60, who translates the term as "court sheriff." Masud, Peters, and Powers, "Qāḍīs and Their Courts: An Historical Survey," 21, translate as "chamberlain"; as does Tyan, *Histoire*, 286. Muṭarrizī also states that in lexicography *jilwāz* is a synonym for policeman (*shurṭī*). See his *Mughrib*, I, 153. Firūzābādī, *al-Qāmūs al-muḥīṭ*, I, 454, states: "The *tartūr* is the *jilwāz*, and a kind of bird, and the *atrūr* is the helper of the policeman [*ghulam al-shurṭī*]." See also Munāwī, *Fayḍ al-qadīr*, III, 366, who states that *jilwāz* is synonymous with *shurṭī*, as does Reinhart Dozy, *Supplément aux dictionnaires arabes* (1881, Beirut: Librairie du Liban, 1968), I, 207a, who gives "gendarmérie" for the plural *jalāwīza*.

¹³¹ Abū Nu'aym, *Ḥilyat al-awliyā'*, IV, 2; Daylamī, *Firdaws al-akhbār* (ed. Zaghlūl), II, 118; Ibn al-Jawzī, *al-Mawḍi'āt*, II, 292; Qurṭubī, *Tadhkira*, 500; Muttaqī, *Kanz al-ummāl*, III, 200. The *kiḷāb al-nār* were commonly not identified with state agents but with rebels. See the

- (1) the policemen resemble the dogs of hell, that is, they behave like infernal torturers; this is a way of criticizing the state officials' use of punishment as excessive;
- (2) the policemen will be the hellish victimizers in the *next* world, a notion that models the *zabāniyya* after their counterparts in this world; or
- (3) the policemen will be reduced to the status of dogs once they enter hell in the *next* world, as the result of a punitive metamorphosis (*maskh*).

All three meanings could be and were in fact *sous-entendu*.¹³² In the light of this plurality of possible interpretations, life on earth and in the hereafter appear as the two coterminous sides of human existence, with neither of the two claiming logical priority.

Other traditions castigate excessive use of force, so characteristic of the medieval Islamic penal system. "Whoever inflicts pain is in hell," the Prophet is reported to have said.¹³³ Qurṭubī explains that this can mean two groups of people: first are those who inflict pain on other people in this world. This is a general condemnation of violence, but in a more narrow sense could refer to the agents of the state executive such as the policemen, market-inspectors, and prison personnel. Second, says Qurṭubī, what could be meant are the animals in this world that cause people pain, such as beasts of prey, vermin, and others. They will continue to do this in hell.¹³⁴ Somewhat more concrete is the threat of punishment in hell voiced in the following *ḥadīth*, preserved in the canonical literature: "There are people of the Fire that I did not see," the Prophet is reported to have said, "those who have whips [*siyāf*] like tails of cows, beating the people with them."¹³⁵ In his commentary on this *ḥadīth*, Qurṭubī suggests that the Prophet wanted to warn against "excessively big whips and against going beyond what is allowed in terms of beating

discussion in Ibn Qudāma, *al-Mughnī* (Beirut: Dār al-Fikr, 1404/[1984–5]), IX, 4–5. This goes back to reports in Ibn Abī Shayba, *Muṣannaf*, VII, 553; Ibn Ḥanbal, *Musnad*, IV, 355; Ibn Māja, *Sunan*, I, 61. All these authors relate from the Prophet that "the Khārijites are the dogs of hell." The *ṣahābī* Abū Umāma al-Bāhilī (d. 86/705) famously cursed the "dogs of hell" when seeing heads of the Khārijites exposed on the fortress in Damascus. See Ṣan'ānī, *Muṣannaf*, X, 152; Ibn Ḥanbal, *Musnad*, V, 250, 253, 256, 269; Bayhaqī, *al-Sunan al-kubrā*, VIII, 188; Tirmidhī, *Sunan*, V, 226. On Ṣudayy b. 'Ajlān Abū Umāma al-Bāhilī, see Ibn Hajar al-'Asqalānī, *al-Iṣāba fī tamyiz al-ṣahāba* (Cairo: Dār Nahḍat Miṣr li-l-Ṭab' wa-l-Nashr, 1970–2), III, 420–1. According to another tradition, suggesting an interpretation based on the principle of *maskh*, "back-biting is the fatty ingredient [i.e., the food] of the dogs of hell [*al-ghūba idāmu kilāb al-nār*]." See Ibn 'Asākir, *Tārīkh madīnat Dimashq*, XLI, 399 (from 'Alī b. Abī Ṭālib). Cf. pp. 53–4.

¹³² See, for example, 'Munāwī, *al-Taysīr bi-l-jāmi' al-ṣaḡhir* (Riya'dh: Maktabat al-Imām al-Shāfi'ī, 1408/1988), I, 491.

¹³³ Al-Khaṭīb al-Baḡhdādī, *Tārīkh Baḡhdād*, XI, 297; Ibn Kathīr, *Tafsīr*, I, 62; Qurṭubī, *Tadhkira*, 493; Muttaqī, *Kanz al-'ummāl*, XIV, 221. Another tradition states that "the harshest punishment on the Day of Resurrection is for those who punished people in this world in the harshest way." See Abū Bakr Aḥmad al-Ḍaḥḥāk, *al-Aḥād wa-l-mathānī* (Riyadh: Dār al-Rāya, 1411/1991), II, 154; Sulaymān b. Dāwūd al-Ṭayālīsī, *Musnad* (Beirut: Dār al-Ma'rifa, n.d.), I, 158; Qurṭubī, *Tadhkira*, 498; Muttaqī, *Kanz al-'ummāl*, V, 155.

¹³⁴ Qurṭubī, *Tadhkira*, 493.

¹³⁵ Muslim, *Ṣaḥīḥ*, III, 1680, IV, 2192; Ibn Ḥanbal, *Musnad*, II, 355, 440; Qurṭubī, *Tadhkira*, 442; Muttaqī, *Kanz al-'ummāl*, XVI, 160.

somebody as a disciplinary measure [*mā yajūzu bihi l-darb fi l-ta'dīb*].” He takes care to point out that such exaggerated punitive practices were still well known in the lands of Islam in his own day.¹³⁶ Qurtubī does not explain, however, the use of the phrase “like tails of cows.” Shayzarī’s definition of the *dirra* comes to mind, which, as he says, is “a whip made of ox or camel hide, filled with date stones.”¹³⁷ Golius and Freytag identified the *dirra* as “a string of ox-hide [*nervus taurinus*].”¹³⁸ And indeed, as Ibn al-Jawzī explains in his commentary to the *ḥadīth*, the men “who have whips like cow tails” are the people of the police (*aṣḥāb al-shurṭa*).¹³⁹ Clothed in the form of a Prophetic tradition, this is a reaction against the use of the *dirra*, an instrument of discipline wielded most notably by the local policemen and the *muḥtasibs*. In fact, the *muḥtasib* appears to be mentioned in other traditions as well. To “command right and forbid wrong [*al-amr bi-l-ma'rūf wa-l-nahy 'an al-munkar*]” was the characteristic domain of the *muḥtasib*. One tradition states that those who command right and do not do it themselves, and who forbid wrong and commit it, are subjected to the most gory punishment (they spin around a wheel like a donkey spins around the mill-stone, their intestines gushing forth from their bellies).¹⁴⁰ Dhahabī identifies the spying on Muslims and uncovering of their intimacy as a grave sin (*kaḥīra*) and therefore punishable by hellfire (no. 69). Both were offenses of which *muḥtasibs*, by virtue of their delicate office, were commonly suspected.¹⁴¹

Government agents other than policemen and market inspectors are mentioned, but are of less concern here.¹⁴² Instead, I will conclude this discussion with threats of punishments directed against the highest-ranking authority in

¹³⁶ Qurtubī, *Tadhkira*, 444. ¹³⁷ Shayzarī, *Nihāyat al-rutba*, 108.

¹³⁸ Quoted in Lane, *An Arabic-English Lexicon*, I, 804a. See also Munāwī, *Fayḍ al-qadīr*, IV, 208, who describes the *dirra* as “a whip of leather the end of which [*tarjūhā*] is strengthened [*mashdūd*] and the width of which [*araqūhā*] is like fingers [i.e., like the joints in a finger]; they beat people with it, for example those suspect of theft so that they say the truth with regard to what was stolen.”

¹³⁹ See Ibn al-Jawzī, *Kashf al-mushkil min ḥadīth al-ṣaḥīḥ ḥayn* (Riyadh: Dār al-Waṭān, 1418/1997), III, 567; Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, XVII, 190. Both Ibn al-Jawzī and Nawawī say they are the *ghilmān walī l-shurṭa*. Munāwī, *Taysir*, II, 94, identifies the *ghilmān walī l-shurṭa* with the *jallādūn*.

¹⁴⁰ Qurtubī, *Tadhkira*, 499. This tradition goes back to Bukhārī, *Ṣaḥīḥ*, VI, 2600; Muslim, *Ṣaḥīḥ*, IV, 2290; Ibn Ḥanbal, *Musnad*, V, 209; Abū Nu'aym, *Ḥilyat al-awliyyā'*, IV, 112. For similar traditions, see Ibn al-Jawzī, *Quṣṣās*, 39; Muttaqī, *Kanz al-ummāl*, VI, 18.

¹⁴¹ Waṭwāt, *Majmū'at al-rasā'il*, 81. On domestic privacy as an inalienable right in Muslim ethics and law, see Alshech, “Do Not Enter Houses Other Than Your Own.” See also Robert Brunschwig’s seminal article “Urbanisme médiéval et droit musulman,” in Brunschwig, *Études d'Islamologie* (Paris: Editions G.-P. Maisonneuve, 1976), II, 7–35. Brunschwig argues that Muslim cities favor private spaces because of the great importance of the concept of inviolability (*ḥurma*) of the familial sphere.

¹⁴² For 'arīf's, see Qurtubī, *Tadhkira*, 448; Haythamī, *Majma' al-zawā'id*, 200; for tax-collectors, Qurtubī, *Tadhkira*, 449; anon., *Baḥr al-fawā'id* (tr. Meisami), 114 (on “illegal tolls,” i.e., tithe, or *uṣhr*). See also Ghazālī, *Naṣīḥat al-mulūk*, 21: “Woe to the army commanders [*amīrān*], deputies [*arīfān*] and policemen [*awānān*]: on the Day of Judgment they will be hung from the sky with their forelocks, for they never have acted as policemen or governors [*iwānī nakardandī wa-na'amal!*]”

the state, the ruler himself. David Cook has claimed that the eschatologists vented their scorn only against the ruler's representatives, that is, the low executive strata of the administration. This appears unlikely, however. For example, Qurtūbī devotes a whole chapter to the punishment of rulers in hell,¹⁴³ and Dhahabī defines the injustice of the ruler as a grave sin (no. 16). It goes without saying that criticisms against the ruling classes had to be formulated with a measure of caution. According to one tradition, Jahannam says to God on the Day of Judgment: "Tyrants [*jabbārūn*] and the proud [*mutakabbirūn*] enter me!" The Garden interjects: "The poor and downtrodden enter me!" and God ends this curious little dialogue with a reaffirmation of his sovereign decision: "I make people enter you as I please."¹⁴⁴ "Hellfire consists of seventy parts," one reads in another tradition; "sixty-nine parts are reserved for those who issue orders [*li-l-āmir*], one part is reserved for those who kill."¹⁴⁵ Other traditions, however, are less oblique. Hell fills up with "tyrants, kings, and pharaohs" and then God lets the weak and downtrodden enter paradise directly.¹⁴⁶ Ḥajjāj, the dreaded Umayyad governor, appears in a dream, lamenting that he has been killed in hell, seventy times for each execution he commanded.¹⁴⁷ The harshest torment in hell is for the unjust sultān.¹⁴⁸ Tyrants are located in the well of *habhab* in the Fire,¹⁴⁹ or in the prison of *falaq*,¹⁵⁰ or on a special bridge in hell.¹⁵¹ Whereas the *‘ulamā* are resurrected together with the prophets, judges keep company with the sultāns, and there is little question which of the two groups is thought to go to paradise.¹⁵² Ghazālī reports from the Prophet that

on the Day of Judgment, the holders of authority will be brought before God, and He will say: "You were the shepherds of My flocks, and the treasure-keepers of My kingdom. Why did you strike with penalties [*ḥadd zadīd*] and inflict punishment [*‘uqūbat kardīd*] in excess of what I bade you?" They will answer: "O Lord God, [it happened] out of wrath because they were offending against you." God will say: "Why should your wrath exceed mine?" . . . Then they will be shown the corners of hell [*gūshahā-yi dūzakh*].¹⁵³

This tradition has to be read against the background of Islamic criminal law and theories of government. As noted earlier, the jurists of Islam tried to

¹⁴³ Qurtūbī, *Tadhkira*, 361.

¹⁴⁴ Muslim, *Ṣaḥīḥ*, IV, 2186; Tirmidhī, *Sunan*, IV, 694; Ibn Ḥanbal, *Musnad*, II, 276, 450, III, 79; Qurtūbī, *Tadhkira*, 434.

¹⁴⁵ Tabarānī, *al-Muʿjam al-ṣaḥīḥ (al-Rawḍ al-dānī)* (Beirut: al-Maktab al-Islāmī, 1405/1985), I, 318; Ibn Abī Shayba, *Musnad al-akhbār* (ed. Dār al-Waṭan), II, 418; Daylamī, *Firdaws al-akhbār* (ed. Zaḡhlūl), II, 69.

¹⁴⁶ Daylamī, *Firdaws al-akhbār* (ed. Zaḡhlūl), I, 335. ¹⁴⁷ Suyūṭī, *Sharḥ al-ṣudūr*, 121.

¹⁴⁸ Ghazālī, *Naṣīḥat al-mulūk*, 19: "adhāb-i ṣaʿabtārīn rūz-i qiyāmat sultān-i zālīm-rā-st."

¹⁴⁹ Daylamī, *Firdaws al-akhbār* (ed. Zaḡhlūl), I, 221.

¹⁵⁰ *Ibid.*, III, 217; Muttaqī, *Kanz al-‘ummāl*, II, 9. ¹⁵¹ Abū Nuʿaym, *Ḥilyat al-awliyā*, V, 372.

¹⁵² Bayhaqī, *al-Sunan al-kubrā*, X, 99. The tradition was held to be spurious. See al-Ḥasan b. Muḥammad al-Ṣaḡhānī, *al-Mawḍūʿāt* (Cairo: Dār Nāfiʿ, 1980), I, 7; Yūsuf b. al-Zakī al-Mizzī, *Tahdhīb al-kamāl fi asmāʾ al-rijāl* (Beirut: Muʿassasat al-Risāla, 1400/1980), XVI, 285.

¹⁵³ Ghazālī, *Naṣīḥat al-mulūk*, 22.

circumscribe the applicability of the divinely ordained punishments (*ḥadd*, pl. *ḥudūd*) and to limit the scope of the so-called discretionary punishment (*ta'zīr*), which lay largely in the hands of the temporal authorities.¹⁵⁴ Ghazālī's story aims to criticize excessive punishment by the ruler, thus offering a response to the ruling classes' strategy of justification, the "ideology of *siyāsa*" discussed in chapter 1 of this study.

Traditions that promise punishment of unjust rulers in the next world can be interpreted as encouraging an attitude of political quietism in this world. However, while an element of "false consciousness" may be present in some of these narratives, eschatological traditions could also empower the negatively privileged by critiquing the social and political status quo. The story related by Ghazālī clearly carries a didactic agenda aimed at his patron, presumably the Saljūq sultān Sanjar. Traditions such as those about the "dogs of hell" or the "tails of cows" seem even less fraught with false consciousness. They are too oblique, too nuanced, to offer immediate comfort to the victims of oppression in this world. What speaks through them, rather, is anger and resentment against the repressive state apparatus.

In conclusion, traditions about punishment in hell reflect the three-tiered model of medieval Islamic society, divided into the lower classes (*ʿamma*), learned elite, and the executive upper strata. As I have suggested, different traditions originate in different social milieus, each claiming a degree of moral superiority, and each locating in hell sinning members of the other two layers of society. Boundaries are difficult to define with precision, and the material is open to a variety of interpretations, but the subversiveness of traditions directed against the *ʿulamāʾ* and the ruling institutions gives some support to the impression that the eschatological idiom gave a voice to those trying to live their lives in a world marked by military rule and the moral hegemony of the religious establishment.

Publicness and shame in hell

As demonstrated in chapter 2 of this study, the disclosure of things private was a common means of inflicting disgrace in Saljūq society, and the public ritual of *tashhīr*, "making public," was a much-practiced and much-dreaded punishment.¹⁵⁵ Notions of shame also reverberate powerfully in the eschatological literature, and the absence of privacy is repeatedly stressed in descriptions of hell (and of the Day of Judgment in particular). Punishment in hell is public by definition: it is carried out in the open, fully visible to the eye

¹⁵⁴ For example, a common legal maxim stipulated that *ta'zīr* ought never exceed the least severe *ḥadd* punishment, that is, forty lashes with the whip. See Abū l-Ḥasan ʿAlī al-Sughdī, *al-Fatāwā* (2nd ed., Amman: Dār al-Furqān, 1404/1984), II, 646. For a discussion of the jurists' views on punishment, both *ḥadd* and *ta'zīr*, see chs. 5 and 6 of this study.

¹⁵⁵ The cultural and legal background and implications of public disgrace are discussed in more detail in ch. 6. Here I propose to analyze only the eschatological dimension of this punishment.

of the beholder. The visitor to hell is witness to the infernal torments, such as the Prophet Muḥammad during his night journey, or any people with dream-visions of hell, or the poet Ibn al-Qāriḥ in Abū l-‘Alā’ al-Ma‘arrī’s (d. 449/1058) *Risālat al-ghufrān*. In fact, the audience of punishment in hell extends beyond the author of eschatological tradition, that is, to his readers, for the act of reading is in itself an act of disclosure. Part of the interest of the readership of the eschatological manuals, or of people listening to public preachers telling stories about infernal punishment, must have been the (imaginary) crossing of the border that separated private from public. In a culture in which notions of shame and honor were avidly defended, eschatology was a window that allowed a look at what was otherwise veiled from sight.

In multiple places, the Qur’ān stresses that in the hereafter sinners will suffer exposure and shame.¹⁵⁶ The Last Judgment takes place “on a day when the secret things are inspected [*yawma tublā al-sarā’ir*]” (86:9). This is one of the forty names in Ghazālī’s list of names of the Day of Judgment.¹⁵⁷ Ghazālī explains that this will be “the day when the secret things are revealed and what was hidden is made plain, and when the veils are lifted.”¹⁵⁸ Qurṭubī devotes a whole chapter of his eschatological manual to “the disgrace [*faḍīḥa*] of the wicked and treacherous at the moment of standing [before God].”¹⁵⁹ The scriptural bases of the Islamic ethos of anti-exhibitionism are usually identified as the injunctions in the Qur’ān and in *ḥadīths* not to spy or pry (Qur’ān 49:12), not to enter houses in a disrespectful manner (Qur’ān 2:189, 24:27), and not to expose one’s legal nakedness (*‘awra*).¹⁶⁰ Descriptions of the public disgrace of sinners on the Day of Judgment and in hellfire may turn out to be another

¹⁵⁶ Ignominy (*dhilla*) and dust (*qatar*) on their faces are the lot of the sinners at the Day of Judgment (Qur’ān 10:26, 58:5); they will meet humiliation (*saḡhār*) (6:124), and in hellfire they will be debased (*muhān*, 25:69) and disgraced (*dākhīr*, 40:60). Cf. *EQ*, s.v. Reward and Punishment, IV, 453b (W. Raven).

¹⁵⁷ Ghazālī, *Ihyā’*, IV, 516. On the *sarā’ir*, see Ṭabarī, *Jāmi‘ al-bayān* (ed. Beirut), XXX, 146 and 147: “fasting, prayer, and ritual cleansing [*ghusl al-jināba*].” The same version can be found in Tha‘labī, *Tafsīr*, X, 180; Qurṭubī, *Aḥkām al-Qur’ān*, XX, 9. All cite a Prophetic tradition that the four *sarā’ir* are praying, fasting, alms-giving, and ritual cleansing. Zamaksharī, *Kashshāf*, IV, 737, states further that the *sarā’ir* are “that which is hidden in the hearts in terms of beliefs and intentions etc., and hidden actions and their results.”

¹⁵⁸ Ghazālī, *Ihyā’*, IV, 517. Cf. Ibn al-Jawzī, *Zād al-masīr*, IX, 84: “fa-inna l-insāna mastūrun fī l-dunyā . . . fa-idhā kāna yawmu l-qiyāma abdā llāhu kulla sirr.”

¹⁵⁹ Qurṭubī, *Tadhkira*, 354.

¹⁶⁰ The term *‘awra* occurs in the Qur’ān (33:13) not in order to designate a person’s legal nakedness, but rather the vulnerability of the Muslims’ houses (*‘awrat buyūtina*). For the *‘awra* of the human body in the *ḥadīth* tradition, see Ṣan‘ānī, *Muṣannaḡ*, I, 289, XI, 27; Ibn Ḥanbal, *Musnad*, III, 478 (*‘awra* encompassing the man’s upper leg); Bukhārī, *Ṣaḡīḥ*, I, 144 (*bāb mā yustaru min al-‘awra*); Muslim, *Ṣaḡīḥ*, I, 267–7 (*bāb ṛ-tinā ḥifz al-‘awra*); Tirmidhī, *Sunan*, V, 97, 110 (*bāb mā jā’a fī ḥifz al-‘awra*). For a more general injunction to “veil” Muslims from disgrace, see the *ḥadīth* in Ṣan‘ānī, *Muṣannaḡ*, X, 228; Ibn Māja, *Sunan*, II, 850; Ibn Ḥanbal, *Musnad*, IV, 104: “man satara musliman satarahu llāh fī l-dunyā wa-l-ākhirā.” See also Ghazālī, *Kīmīyā-yi sa‘ādat* (tr. Ritter), 113 and passim. The two Qur’ānic verses and the *man satara* tradition are discussed by Michael Cook with reference to what he calls the Islamic “respect for privacy.” See his *Commanding Right and Forbidding Wrong*, 80.

important formative factor in the development of this ethos, for the eschatological literature amply improvises on the theme of exposure and disgrace.

Perhaps the most obvious infliction of shame on the sinners is their nakedness before God. The idea is adumbrated by Qurʾān 22:19, which speaks of the fiery clothes of the damned standing before God as being “cut to pieces [*thiyābun quṭṭīʾat min al-nār*].” A tradition describes how on the Day of Judgment in Jerusalem “people will be gathered, walking barefoot, naked, uncircumcised, and completely hairless [*yuhsharu l-nās ḥufāt mushāt ʿurāt ghuralan mā ʿalā aḥad minhum ṭihliba*].”¹⁶¹ Likewise, the inhabitants of hell’s mansions and those languishing in the Fire are naked.¹⁶²

It could be argued that these traditions aim to illustrate man’s powerlessness and utter dependence on God, not the shame felt vis-à-vis one’s fellow humans. However, for people with less theological sophistication, such traditions may have had a different ring. The eschatologist Qāḍī, who continuously stresses the debasement of the sinners in the hereafter, states that people’s genitals (*furūj*) will be openly visible, and that women in the Fire will cry out: “What disgrace [*faḍīḥa*]! And what ripping apart the veil of shame [*hatk al-sarṭ*]!”¹⁶³ Other eschatologists did not go quite as far. As one tradition states, when one of Muḥammad’s wives heard him say that all mankind will be resurrected barefoot, naked, and uncircumcised, she cried out: “How shameful! Are we to look at each other?” Muḥammad reassured her: “People will be too distracted for that,” then quoting Qurʾān 80:37: “Each man shall that Day have concern enough to make him heedless [*li-kulli -mraʾin minhum yawmaʾidhin shaʾnun yughnīhi*].”¹⁶⁴ Ghazālī embraced this view, arguing that on the Day of Judgment people’s private parts (*ʿawrāt*) will be revealed, “but no harm can be done by looking and beholding.”¹⁶⁵ Notwithstanding such attempts at mitigation, disclosure of one’s most private parts remained a part of the terrible trial awaiting the sinners before God. And there were other forms of disgrace they were expected to suffer.

Defacing and other marks of sinners in hell

Just as the expression “God’s face [*wajh Allāh*]” is a symbol for God’s existence (cf. Qurʾān 2:115, 2:272, 13:22, *passim*), the human face stands

¹⁶¹ Al-Ḥākim al-Nīsābūrī, *Mustadrak*, II, 267 and *passim*; Suyūṭī, *al-Laʿālī al-maṣnūʿa*, I, 54. Ghazālī also talks of those who “shall be driven barefoot, naked, and uncircumcised to the Land of the Concourse.” See his *Ihyāʾ*, IV, 513.

¹⁶² Qushayrī, *K. al-Mīrāj*, 37; Qāḍī, *Daqāʾiq al-akḥbār*, 69. See also Suyūṭī, *Sharḥ al-ṣudūr*, 121. In his chapter on “meetings between the spirits of the dead and the alive during sleep,” Suyūṭī relates other dream-visions of the dead in hell, who are naked or one-eyed. See *ibid.*, 117.

¹⁶³ Qāḍī, *Daqāʾiq al-akḥbār*, 66.

¹⁶⁴ Ibn Hanbal, *Musnad*, VI, 89 (from ʿĀʾisha); Nasāʾī, *Sunan*, I, 667, VI, 506–7 (ʿĀʾisha); Tirmidhī, *Sunan*, V, 432 (*fulāna*); al-Ḥākim al-Nīsābūrī, *Mustadrak*, II, 276, 559 (Sawda); Ghazālī, *Ihyāʾ*, 513.

¹⁶⁵ Ghazālī, *Ihyāʾ*, 513.

pars pro toto for the human condition: “I have surrendered my face [that is, my whole self] to God [*aslantu wajhī li-llāh*, Qurʾān 3:20],”¹⁶⁶ or in the *ḥadīth* tradition: “Those who fast one day in the way of God, He will distance their faces [*bāʿada wajhahu*] from hell seventy seasons.”¹⁶⁷ As for those who are haughty and greedy, on the other hand, God will disfigure (*shāna*) their faces.¹⁶⁸ The face is a sign of the fragility and powerlessness of humanity in the presence of God. As such, it is the prime target of humiliation and punishment in the hereafter. An eschatological tradition states that the hands, feet, and necks of the sinners will be tied together in iron chains and then “they are thrown into the Fire shackled [*maṣfūdūn*], and they have nothing to protect themselves except their faces [*laysa lahum shayʾun yataqūna bihi illā l-wujūh*] – but they are blind, their vision having disappeared from them.”¹⁶⁹ According to the Qurʾān, the guardian angels in hell beat the sinners’ faces (8:50, 47:27), and a *ḥadīth* adds that those who neglected prayer during their life are smitten in the face with their prayer rug rolled up like shabby clothes.¹⁷⁰ Sometimes the defacement of the inhabitants of hell is imagined with grotesque detail. Not only are the people of the Fire blind and deaf (Qurʾān 17:97),¹⁷¹ but they also have their ears and noses severed.¹⁷² The gaolers of hell trample on the sinners’ tongues.¹⁷³ Hellfire is so fierce that the upper lip of the sinner “is rolled up until it reaches the middle of his head, and his lower lip will hang down until it beats on his navel.”¹⁷⁴

As the Qurʾān states, “On the Day of Judgment, We will convene them on their faces [*naḥshuruhum yawma l-qiyāma ʿalā wujūhihim*]” (17:97; cf. 25:34),¹⁷⁵ and “they will be dragged on their faces into the Fire [*yushābūna fī l-nār ʿalā wujūhihim*]” (54:48). “Who has pride in his heart the weight of a mustard seed, God will throw him down on his face in the Fire,” states one tradition.¹⁷⁶ A number of offenses are specified that deserve such treatment. The man who seeks martyrdom for the sake of gaining a reputation of being courageous will be dragged on his face and thrown into the Fire; the same is

¹⁶⁶ On “submitting one’s face to God,” see Helmer Ringgren, *Islām, ʿaslama and Muslim* (Uppsala: C. W. K. Gleerup, 1949), 22–4; D. Z. H. Baneth, “What Did Muhammad Mean When He Called His Religion ‘Islam’? The Original Meaning of *aslama* and Its Derivatives,” *Israel Oriental Studies* 1 (1971), 183–90, repr. in Andrew Rippin (ed.), *The Qurʾān: Style and Contents* (Aldershot: Ashgate, 2001), 85–92. On metonymical uses of the human face in the Qurʾān, see Toufic Sabbagh, *La métaphore dans le Coran* (Paris: Adrien-Maisonneuve, 1943), 115.

¹⁶⁷ Bukhārī, *Ṣaḥīḥ*, II, 808; Nasāʾī, *Sunan*, II, 97; Qurtubī, *Tadhkira*, 460; Muttaqī, *Kanz al-ʿummāl*, IV, 147.

¹⁶⁸ Qurtubī, *Tadhkira*, 360. ¹⁶⁹ *Ibid.*, 483. ¹⁷⁰ Ghazālī, *al-Durra al-fākhira*, 18–19.

¹⁷¹ Cf. Qaḍī, *Daqāʾiq al-akhbār*, 69. ¹⁷² Ghazālī, *Iḥyāʾ*, IV, 530.

¹⁷³ Tirmidhī, *Sunan*, IV, 704; Qurtubī, *Tadhkira*, 494; Ghazālī, *Iḥyāʾ*, IV, 533.

¹⁷⁴ Ibn al-Mubārak, *Musnad*, I, 76; Ibn Hanbal, *Musnad*, III, 88; Tirmidhī, *Sunan*, IV, 708, V, 328; al-Ḥākim al-Nisābūrī, *Mustadrak*, II, 428; Samʿānī, *Tafsīr*, III, 492; Suyūṭī, *al-Durr al-manthūr*, VI, 118.

¹⁷⁵ Cf. Samarqandī, *Tafsīr*, II, 330; Bayḍawī, *Tafsīr*, III, 468; Ghazālī, *Iḥyāʾ*, IV, 530.

¹⁷⁶ Ibn ʿAsākir, *Madḥ al-tawāḍuʾ wa-dhamm al-kibr*, 27.

done to the vain scholar and the rich man who is generous only so that he will be recognized as such.¹⁷⁷ Ghazālī relates that the people of hell walk upon the Fire on their faces, stepping upon spikes of iron with their eyeballs.¹⁷⁸

In addition to the beating, mutilation, or dragging of faces, another topos is that of the blackened faces of sinners (cf. Qurʾān 3:106, 39:60).¹⁷⁹ Ghazālī states that the faces of the doomed are “blacker than charcoal.”¹⁸⁰ Exegetical *ḥadīths* also detail what classes of sinners are meant by “those with blackened faces” in Qurʾān 3:106.¹⁸¹ The scorching of skin extends to peoples’ sides and backs, and Qurṭubī explains that the blackening of faces aims to take away beauty, while the burning of the side and back is meant to inflict pain.¹⁸² However, blackening of the face remains the typical case. There is even partial blackening of faces, indicating gradations of sinful behavior. Ibn al-Jawzī relates the story of someone who sees Abū Naṣr Ḥabīb al-Najjār, the Basrian preacher, in a dream. On his beautiful face, suddenly there is a black spot. Ḥabīb explains that

¹⁷⁷ Muslim, *Ṣaḥīḥ*, III, 1513; Nasāʾī, *Sunan*, V, 30, VI, 477; Qurṭubī, *Tadhkira*, 449, 450; Qurṭubī, *Aḥkām al-Qurʾān*, III, 189; Muttaqī, *Kanz al-ummāl*, III, 189.

¹⁷⁸ Ghazālī, *Iḥyāʾ*, IV, 530. Cf. *ibid.*, 513, where Ghazālī brushes off possible criticisms that men cannot walk on their eyes. As he writes, “it is part of human nature to deny all that with which one is unfamiliar . . . Beware of denying any of the wonders of the Day of Resurrection because they do not accord with the measure of mundane things.” Zamakhsharī, *Kashshaf*, II, 650, also accepts that people will walk on their faces at the Day of Judgment.

¹⁷⁹ “Yawma tabyaḍḍu wujūhun wa-taswaddu wujūhun.” This is usually because hellfire scorches their skin (Qurʾān 14:50, 21:39, 23:104, 27:90, 33:66), but also dust (*ghabara*, 80:40) and earth (*qatar*, 10:26) make faces black, or simply the sinners’ ignominy (*dhilla*) is so great that it appears “as if their faces had been covered [*ughshiyat*] with a cloak of darkest night” (10:27).

¹⁸⁰ Ghazālī, *Iḥyāʾ*, IV, 530. Cf. Ghazālī, *al-Durra al-fākhira*, 56. For grilled faces, see the traditions in Tirmidhī, *Sunan*, IV, 705; Nasāʾī, *Sunan*, VI, 371. Samʿānī, *Tafsīr*, VI, 204, says black and white faces on the Day of Judgment are the signs by which are revealed “the secret things [*al-sarāʾir*]” mentioned in Qurʾān 86:9.

¹⁸¹ Qurṭubī, *Tadhkira*, 311, relates the following opinions: the people with black faces are the innovators (from the Prophet), people of passions (from Mālik b. Anas), hypocrites (from al-Ḥasan al-Baṣrī), apostates (from Qatāda), or the unbelievers (from Ṭabarī and Abū b. Kaʿb). For Qurʾān commentaries on *sūra* 3:106, see Ṭabarī, *Jāmiʿ al-bayān* (ed. Beirut), IV, 39–41; Samarqandī, *Tafsīr*, I, 261–2; Samʿānī, *Tafsīr*, I, 347; Qurṭubī, *Aḥkām al-Qurʾān*, IV, 166–8.

¹⁸² Qurṭubī, *Tadhkira*, 354, 359. Such notions are echoed rather curiously in a modern Saudi poet’s *hijāʾ* poem directed against Saddam Hussein after the invasion of Kuwait in 1990:

Saddam, O Saddam,
Of our flesh not are you.
Claim not to be a Muslim,
For you are truly a Jew.
Your deeds have proved ugly,
Your face is darkest black.
And we will yet set fire
To your bottom and your back.

The poem was first brought to the attention of the American public by Ehud Yaʿari and Ina Friedman, “Curses in Verses,” *Atlantic Monthly* (February 1991), 22–6, and is quoted by Bell, *Ritual*, 155, even though she does not comment on the poem’s eschatological subtext.

I passed through the quarter of the Banū ‘Abs in Baṣra and I saw a young beardless lad wearing a light *ghilāla* cloth under which his body was distinguishable. I looked at him. When I came to my Lord, He said to me: “Ḥabīb!” I said: “Here I am!” He said: “Pass over the Fire!” So I passed over the Fire, and it blew this blow on me. I cried: “Help!” He called to me: “A blow [*naḥḥa*] for a quick glance [*lamḥa*]. Had you done more, verily We would have punished you more!”¹⁸³

Next to nakedness and defacing, there is another marker of shame and disgrace for the sinner in hell. The eschatological literature makes sinners carry special signs and banners on the Day of Judgment that announce their crime to the assembly before God’s tribunal of justice. Again, this idea has a scriptural base. The Qur’ān states that the unbelievers, at the moment of the Hour, “carry on their backs their burdens [*yaḥmilūna awzārahum ‘alā zuḥūrihim*]” (6:31), that is, it seems, the burden of their sins. More concrete, however, is Qur’ān 3:180: “That which they held on to will be tied to their necks [*yuṭawwaqūna*] on the Day of Resurrection.” Paret judged that one ought not to read too much into (“hineingeheimnissen”) the expression *sa-yuṭawwaqūna*,¹⁸⁴ but it appears possible that this actually refers to a ritual of public parading.

In any case, the passage was taken very literally by the eschatologists. “On the Day of Resurrection, everybody will bring something on his neck [*‘alā raqbatihī*],” states one tradition,¹⁸⁵ and from here it was a short way to combining the notion that the sinner standing before God is marked by a sign around his neck with another Qur’ānic pericope, namely, verse 10:27: “Those who do evil deeds, their reward is an ill-deed by the like thereof, and they will suffer disgrace.” Thus, as the sinners convene before God’s throne, their sins are recognizable by the signs they carry around their necks. A jug will be hung from the neck of the drunkard, or the string instrument called the *ṭunbūr* is put on his shoulders.¹⁸⁶ The *‘ūd* player will be resurrected with an *‘ūd* in his hand, the *nay* player with a *nay*.¹⁸⁷ The thief carries around his neck the stolen object.¹⁸⁸ The market-seller who manipulated his weights carries a yoke of fire, and vain Qur’ān readers have a copy of the Qur’ān fastened to their neck.¹⁸⁹ The proud and rich are weighed down by their riches, including their slaves.¹⁹⁰ The active homosexual partner (*lūṭī*) comes out of his grave with his genitals stuck to the back of his partner, “and they are exposed to the eyes of all creatures [*muftadiḥūn ‘alā ru’ūs al-khalā’iq*] on the Day of Resurrection.”¹⁹¹ The sinner who held back the alms payable for possession

¹⁸³ Ibn al-Jawzī, *Dhamm al-hawā*, 147. Perhaps a related notion is that sin leaves a black spot on the sinner’s heart. See Makkī, *Qūt al-qulūb* (tr. Gramlich), I, 377; van Ess, *Theologie und Gesellschaft*, IV, 579.

¹⁸⁴ Paret, *Konkordanz*, 87. ¹⁸⁵ Abū ‘Awāna, *Musnad*, IV, 392–3.

¹⁸⁶ Qāḍī, *Daqā’iq al-akhbār*, 71; Ghazālī, *al-Durra al-fākhira*, 53.

¹⁸⁷ Ghazālī, *al-Durra al-fākhira*, 53.

¹⁸⁸ Muttaqī, *Kanz al-‘ummāl*, V, 222 (a drinking bowl, *qadaḥ*). ¹⁸⁹ Asin, *La escatologia*, 149.

¹⁹⁰ Abū ‘Awāna, *Musnad*, IV, 396; Ibn Abī Shayba, *Muṣannaf*, VI, 525.

¹⁹¹ Ibn al-Jawzī, *Dhamm al-hawā*, 216.

of camels will carry on his shoulders “a camel that brays loudly and whose weight is that of a big mountain,” and, similarly, roaring bulls, neighing horses, and bleating goats weigh down on the sinner.¹⁹² Whosoever “oversteps the limits of his land [*izdāda takhūm arḍihī*]” will carry on his neck “seven earths”;¹⁹³ the man who did not pay his bills carries “billets fluttering [*riqāʾ takhfīqu*],”¹⁹⁴ and a snake symbolizing greed is curled around the neck of the man who did not give alms from his money.¹⁹⁵ The idea of carrying a heavy load is also combined with the notion of the precarious passage over the infernal Bridge, making it all the more difficult.¹⁹⁶

As Ghazālī puts it, “to whomever has sinned, the likeness of his sin appears in visible form.”¹⁹⁷ However, there is more to these reports than just talionic tit-for-tat. The underlying principle of these punishments is *tasmīʿ*, that is, to announce the sin to those present at the Judgment. Attaching the sin in visible form to the body of the offender is, in fact, what could be called an act of “making public [*tashhīr*],” a measure to oblige those standing before God’s throne, or passing over the Bridge, to reveal their sinful identity and thereby incur disgrace. This is why sinners are also described as carrying banners.¹⁹⁸ Traitors are those most commonly marked by flags. “When on the Day of Resurrection the first and the last are brought together by God, He will raise a banner for each of the traitors [*li-kulli ghādir*] and he will be known by it, and it will be said [on the banner]: ‘This is the act of treachery [*ghadra*] of N. N. son of N. N.’”¹⁹⁹ Another *ḥadīth* relates that he who betrays the leader of the

¹⁹² Ṣanʿānī, *Muṣannaf*, IV, 55; Bukhārī, *Ṣaḥīḥ*, II, 508, III, 1118, VI, 2624; Muslim, *Ṣaḥīḥ*, III, 1461, II, 917; Ibn Ḥanbal, *Musnad*, II, 426, V, 523; Ibn Abī Shayba, *Muṣannaf*, VI, 525; Qurtūbī, *Tadhkīra*, 355, 356; ʿAynī, *ʿUmdat al-qāwī*, XV, 7.

¹⁹³ Ṭabarānī, *al-Muʿjam al-kabīr*, XXIV, 190; Haythamī, *Majmaʿ al-zawāʿid*, IV, 217; Muttaqī, *Kanz al-ʿummāl*, XVI, 40.

¹⁹⁴ Bukhārī, *Ṣaḥīḥ*, III, 1118; Muslim, *Ṣaḥīḥ*, III, 1461; Bayhaqī, *al-Sunan al-kubrā*, IX, 101; Abū ʿAwāna, *Musnad*, IV, 397.

¹⁹⁵ Qurtūbī, *Tadhkīra*, 356. See also Ghazālī, *al-Durra al-fākhira*, 65, with a less detailed version of the same *ḥadīth*.

¹⁹⁶ Ghazālī, *Iḥyāʾ*, IV, 524. Another example is the sodomite made to carry his lover across the narrow path, thus inevitably stumbling and falling into the hell-funnel: ʿUbayd-i Zākānī, *Kulliyāt*, 429.

¹⁹⁷ Ghazālī, *al-Durra al-fākhira*, 65–6. A similar notion appears in Qurtūbī, *Tadhkīra*, 297.

¹⁹⁸ However, flags on the Day of Judgment can also denote salvation: there will be both banners of ignominy and humiliation (*al-wiyat khizy wa-faḍīḥa*) and those of praise and elevation (*ḥamd wa-tashrīf*). See Qurtūbī, *Tadhkīra*, 357. According to a tradition in Ibn Ḥanbal, *Musnad*, I, 281, 295, the Prophet Muḥammad himself gathers the good people under his banner of praise (*liwāʾ al-ḥamd*) to lead them over the Bridge to the gate of paradise. Cf. the description of the *liwāʾ al-ḥamd* in Qāḍī, *Daqāʾiq al-akhbār*, 53. Echoing ancient Near Eastern battle motifs, different prophets and religious figures, such as Shuʿayb and Ayyūb, carry flags in front of different classes of the saved. See Qurtūbī, *Tadhkīra*, 357; Qāḍī, *Daqāʾiq al-akhbār*, 52. Cf. MacDonald, “Paradise,” 336–9.

¹⁹⁹ Bukhārī, *Ṣaḥīḥ*, III, 1164, VI, 2555; Muslim, *Ṣaḥīḥ*, III, 1359–61; Nasāʾī, *Sunan*, V, 225; Ibn Māja, *Sunan*, II, 959; Tirmidhī, *Sunan*, IV, 144; full version in Qurtūbī, *Tadhkīra*, 355. Cf. the execution of the traitor ʿAlī Chatrī under Sanjar’s imperial banner (*zīr-i rāyat*), discussed on pp. 33–4. Next to traitors, Qurtūbī mentions Imruʾ al-Qays as carrying the banner of the unbelieving poets in the Fire. See *Tadhkīra*, 357, as well as Munāwī, *Fayḍ al-qadīr*, II, 186.

Muslim community (*imām*) will have a banner planted on his buttocks (*yurkazu liwā'uhu 'inda istihi*).²⁰⁰ As Qurṭubī explains, God has fashioned *tashhīr* punishments on the Day of Judgment “according to what people are familiar with and according to what they understand,” for in poetical speech “to raise the banner over someone” expresses the idea of treason. Qurṭubī goes on to relate that

[t]he Arabs used to raise a banner over the traitor in public processions and during pilgrimage season. In like manner, the criminal is shown around with [a sign of] his crime [*yutāfu bi-l-jānī ma'a jināyatihi*]. Some of the *'ulamā'* are of the opinion that what the perfidious [*ghāll*] is made to carry [on the Day of Judgment] is a metaphor [*ibāra*] for the seriousness [*wizr*] and for the notoriousness of the affair. That is, on the Day of Resurrection, God makes public [*shahhara*] his situation, in the way in which he would be made public if he were [really] to carry a braying camel or a neighing horse. I say, however, that this is relinquishing reality [*haqīqa*] for metaphor [*majāz*] and similitude [*tashbīh*].²⁰¹

As this passage suggests, *tashhīr* in front of God and the assembly of human-kind on the Day of Judgment was understood to parallel an old penal practice of the Arabs.²⁰² Here then we have another indication of how closely the imagination of the eschatologist was tied to the conceptual horizon gained in *this* world.

Performative dimensions of the Muslim *imaginaire* of hell

In conclusion to this chapter, let us try to turn the equation around. Is it possible to think that actual punitive practice was conditioned by eschatological notions? Punishment in hell no doubt reflects this-worldly practices, but to what extent is life on earth a function of imaginations of the hereafter? In the following, I suggest that eschatological notions informed this-worldly rituals of punishment, especially the public ritual of *tashhīr*. Thus, in addition to the psychological-ascetic, structuralist, and moral-didactic aspects of Islamic eschatology, I now come to analyze what could be called its performative dimension. This takes us right into the middle of one of the central debates in social theory, that is, whether there is a primacy of ideas over material circumstances, or vice versa. Let us recall that Geertz, the most well-known protagonist of the turn toward an interpretive approach to the study of cultures, has posited that religious ideas are both *models-of* a general order

²⁰⁰ Tirmidhī, *Sunan*, IV, 483; al-Hākim al-Nisābūrī, *Mustadrak*, IV, 551; Qurṭubī, *Tadhkira*, 355. Ibn Kathīr, *Tafsīr*, II, 175, 568, quotes the tradition in the *ṣaḥīḥayn* that every traitor will have a flag at his side at the Day of Judgment (for this tradition, see p. 167), and states that the secret things “will be made public [*tashthirū*].”

²⁰¹ Qurṭubī, *Tadhkira*, 356.

²⁰² To carry a banner into battle, however, was a sign of great honor among the old Arabs. See Georg Jacob, *Altarabisches Beduinenleben* (1897, repr. Hildesheim: G. Olms, 1967), 126.

of existence and *models-for* certain behavioral inclinations.²⁰³ While this chapter has, up to now, focused on Islamic eschatological ideas as *models-of* a certain social order, let us try to analyze eschatological *tashhīr* as a *model-for* punitive practice. Rather than taking eschatology as a point of departure, let us look at actual punitive practice, as reported in the historical sources, and see to what extent *tashhīr* trials under the Saljūqs can be understood to be enactments, or performances, of eschatological notions.

In the survey of punishments under the Saljūqs in part I of this study, mention has been made of the blackened faces of those who were paraded in the *tashhīr* punitive ritual. Such was the fate of four women in 531/1137 and of two merchants in 533/1139, all of whom were paraded in Baghdad. The Ghūrid king Sayf al-Dīn Sūrī likewise suffered this treatment in 544/1149, and the miller mentioned by the chronicler Dhahabī under the year 572/1176 who refused to sell wheat to a customer, blasphemously invoking God, was equally punished in this way. By now the eschatological dimensions of this practice should be evident. Eschatological reports about blackened faces circulated so widely that it is not impossible to assume that they could have stimulated punitive inclinations on a broad basis. As I have suggested repeatedly, eschatological *ḥadīths* constituted a popular genre. In other words, eschatological markers of punishment were by no means ideas reserved for an educated élite, but percolated down to the masses. Ibn al-Jawzī relates a sermon in the year 520/1126 by the caliph Mustarshid, held in front of the Baghdad populace. The caliph, in the face of an impending attack by the sultāns Maḥmūd and Sanjar, evoked the coming of the Day of Judgment to the congregation: “Fire will scorch the faces of the rebels [*talfāḥu wujūha l-ʿuṣāt al-nār*] . . . Nobody will be spared from God’s punishment except those whom He forgives.”²⁰⁴

One could argue that the (partial) nakedness of the victims of *tashhīr* rituals was likewise a reminder of the nakedness of the sinners before God’s court of justice and in the Fire. The vizier Ibn al-Muslima was brought out of his prison in fetters, wearing a cloth of rough wool (*jubbat sūf*), reminiscent of the ragged clothes of sinners mentioned in Qurʾān 22:19. Like those gathered “barefoot and completely hairless” on the Day of Judgment, the preachers Badīʿ and Maghribī as well as the poet Ḥīsbīs were led in procession through the city barefoot, heads and beards shaved. From the rooftops in Ghazna, dust and ashes, both markers of eschatological doom, were launched upon the heads of the Ghūrid king Sūrī and his vizier, Sayyid Majd al-Dīn Mūsawī. As Ibn Nubāta (d. 374/984), the famous Būyid preacher, had warned his congregation, “a fearful trial will be your lot, O men, your faces will be

²⁰³ Clifford Geertz, “Religion as a Cultural System,” in Geertz, *The Interpretation of Culture* (1973, New York: Basic Books, 2000), 87–125, esp. 93–4.

²⁰⁴ Ibn al-Jawzī, *Muntaẓam*, XVII, 234. It appears that not much had changed since the fourth/tenth century, when, as Mez notes, “the usual Friday sermon had but one theme: the end is near.” See Mez, *Renaissance*, 320.

covered with dust from the reeling of the earth and you will be livid with fright . . . You will be naked and barefoot as you were on the day you were born.”²⁰⁵

As for the markers and signs that the victims of *tashhūr* were made to carry, mention has been made of the *ṭarṭūr* hat, which was often decorated with jingles or sea-shells. It appears that often these items of impurity reflect certain magical beliefs of “contagion.” However, the notion that the like of one’s crime will be fastened around one’s neck on the Day of Judgment also seems to have played a role in *tashhūr* pageants. Reference has been made earlier in this study to the cannibal of Damghān, a man who was publicly paraded during the famine of 494/1101 for having eaten the flesh of a young boy. The sources state that the hand of the boy was fastened to the neck of the man during the parade.²⁰⁶ A couple of years later, a grave-robber in Baghdad carried his own amputated hands.²⁰⁷ The practice survived into Ottoman times and even found its way into the *Qānūn-i ‘Osmānī* promulgated under Süleyman the Magnificent (r. 1520–66). According to the Ottoman Criminal Code,

a person who has wounded someone is to be led through the streets with an arrow or a knife thrust through his arm. Other decrees mention that someone who has stolen a chicken is to be paraded with the stolen chicken hanging from his neck and a person who has thrown carcasses in the street, in spite of warnings from the environmental police [*çöplük subaşı*], must go around the town with a carcass’s head hanging from his neck. In cases of violations of market regulations, an offender was sometimes led around with his faulty goods hanging from his nose, which was first pierced for the purpose, or with his head put through a very heavy wooden board to which a small placard was affixed and on which his defective commodities were placed.²⁰⁸

The vizier Ibn al-Muslima was also marked with a special sign. Around his neck, as Ibn al-Ṭiṭṭāqā tells the reader, was a collar of skins (*mikhnaqatun min al-julūd*). It is possible that this involved the kind of “impure” fox and cat tails that Shayzarī mentions in his description of the *ṭarṭūr*. However, other considerations may have influenced Ibn al-Ṭiṭṭāqā’s choice of words, as well as the choices made by Ibn al-Muslima’s tormentors. The term *julūd* occupies a prominent place in Qur’ān 41:19–21: “Upon the day when God’s enemies are mustered to the Fire . . . their hearing, their eyes, and their skins [*julūd*] bear witness against them concerning what they have been doing.” The lexicographer Farrā’ (d. 207/822) claimed that *julūd* in this verse meant “pudenda [*furūj*],”²⁰⁹ and this meaning was also known to Ibn

²⁰⁵ Quoted in Mez, *Renaissance*, 321. Ibn Nubāta was considered an authority in eschatological matters. Ghazālī, in his *al-Durra al-fākhira*, 16, relates someone’s dream-vision of Ibn Nubāta in dialogue with God.

²⁰⁶ Ibn al-Jawzī, *Muntaẓam*, XVII, 66.

²⁰⁷ Ibn al-Fuwaṭī, *al-Hawādith al-jāmī’a*, 306–7, quoted in *MA*, III, 251.

²⁰⁸ Peters, *Crime and Punishment*, 98.

²⁰⁹ Abū Zakariyyā’ Yaḥyā’ b. Ziyād al-Farrā’ (d. 207/822), *Ma’ānī al-Qur’ān* ([Cairo]: Al-Hay’a al-Miṣriyya al-‘Āmma li-l-Kitāb, 1973), III, 16.

al-Jawzī.²¹⁰ The rather bizarre notion that people's pudenda could speak out against them on the Day of Judgment can be explained on the basis of Islam's strict condemnation of fornication.²¹¹ However, regardless of whether the term *juḷūd* commonly had the meaning of "pudenda" or not, given the prominence of the cited Qur'ānic verse, skins fastened to the neck of the *tashhīr* victim could serve as a reminder of Qur'ān 41:19 and of the Hour of Judgment, in which the sinner's own limbs were going to testify to the accuracy of the judgment rendered.²¹²

Other aspects of the *tashhīr* ritual may also reveal an eschatological logic at work. As can be seen from the historical accounts, donkeys or camels were commonly used to parade the victims of *tashhīr*. Lexically, both animals are subsumed under the category of *dābba*, or riding animal. Given the appropriate context, the term *dābba* could refer to the archetypal "Beast of the Earth" (Qur'ān 27:82), equivalent to the term *θήριον* in the Apocalypse of St. John (13:11). It is true that, on the one hand, the *dābba* of the end of time is a marvelous creature, not an ordinary donkey or camel, the likes of which were commonly used in *tashhīr* processions. On the other hand, in Islam the beast of the Apocalypse is not the devilish creature of the Christian tradition but, rather, a simple messenger from God.²¹³ In fact it is conceived as a fantastic animal that *does* bear resemblance to common quadrupeds: it has the head of an ox, the eyes of a pig, the ears of an elephant, the horns of a stag, the neck of an ostrich, the front part of a lion, the haunches of a cat, the tail of a sheep, and the legs of a camel.²¹⁴ Those convicted of *tashhīr* were sometimes paraded on elephants, a non-indigenous species which always

²¹⁰ Ibn al-Jawzī, *Zād al-masīr* (ed. Beirut), VII, 96, attributes this view to Ibn 'Abbās. Ibn Manẓūr in his *Lisān al-'arab* says that *jild* (pl. *juḷūd*) can mean "penis [*farj*]," III, 124, referring to Ibn Sida (d. 458/1066), who, in a somewhat obscure passage, gives as meaning of the plural *juḷūd* "[things] with which, as in manual operations, acts of disobedience are performed [*musūkhumu llatī tubāshiru l-ma'āsī*]." See Ibn Sida, *al-Muḥkam* (ed. Cairo), VII, 230b.

²¹¹ Cf. the well-known *ḥadīth* that states that "[t]he eyes commit adultery by their looking, the hands commit adultery by their grasping [*baṭash*], the feet commit adultery by their walking, the mouth commits adultery by kissing, and the heart desires and hopes, and the pudenda declare this to be the case or not [*wa-l-farju yuṣaddiqu dhālika aw yukadhdhibuhu*]." See Bukhārī, *Ṣaḥīḥ*, V, 2304, VI, 2438; Muslim, *Ṣaḥīḥ*, IV, 2046; Nasā'ī, *Sunan*, VI, 473; Abū Dāwūd, *Sunan*, II, 246, IV, 276; Ibn Ḥanbal, *Musnad*, II, 276, 317, 329, 343–4, 535; Ṭabarī, *Jamī' al-bayān* (ed. Beirut), XXVII, 66; Samarqandī, *Tafsīr*, III, 344; Ibn al-Jawzī, *Dhamm al-hawā*, 199. Cf. *ibid.*, 203.

²¹² Also note the Persian idiom *pūst bāz kardan*, "to reveal the secrets of the heart." See Steingass, *A Persian–English Dictionary*, 259b.

²¹³ Tor Andrae, *Der Ursprung des Islams und das Christentum* (Uppsala: Almqvist & Wiksell, 1926), 63: "Aus dem teuflischen Wesen der Apokalypse ist im Koran ein Gottesbote geworden." David Cook, *Studies in Muslim Apocalyptic*, 121, points out that "[t]hrough its appearance is said to cause fear, in none of the traditions does the *dābba* do anything remotely like what the evil apocalyptic figures do."

²¹⁴ David Cook, *Studies in Muslim Apocalyptic*, 122, quoting Māwardī, *Tafsīr* (Kuwait: Wizārat al-Awqāf, 1982), III, 210, and others.

inspired popular awe.²¹⁵ Also, it was believed that the *dābba* of the end of times would set a black mark between the eyes of the ungodly.²¹⁶ If this can be read as a reference to the blackened faces of sinners before God's court of justice, it may not be too far-fetched to think of the *dābba* in the *tashhūr* trial as an eschatological messenger of doom.²¹⁷

Whether any of these notions were in fact consciously enacted during *tashhūr* trials, one cannot tell. For example, it remains uncertain to what extent the term *julūd*, or an amulet made thereof, could provoke eschatological connotations in the minds of the participants, active and passive, in Ibn al-Muslima's public humiliation. Let us guard against the danger of over-interpretation, even though one could continue in this vein. Thus, one could speculate whether the two iron hooks (*kullābān*) with which the Ibn al-Muslima was pulled up by his jaws could be read as a reminder of the hooks in Qur'an 22:19–21 used by the guardians of hell to drag the sinners into the Fire, or to slit the corners of their mouths.²¹⁸ And was it coincidental that Sayf al-Dīn Sūrī and his vizier Majd al-Dīn Mūsawī were gibbeted and hanged from a bridge?²¹⁹ Or are we justified in thinking that this was intended as an allusion to the hellish bridge of *sirāṭ*?

Ritual aspects of *tashhūr*

Be that as it may, none of these deliberations can be proven. The argument I would like to put forth is one built, rather, on cumulative evidence. To paraphrase the scholar of ritual Catherine Bell (who discusses Foucault's analysis of the public execution of the regicide Damiens in 1757), the least one can say is this: clearly, Ibn al-Muslima's as well as Sūrī's *tashhūr* trials and executions were concerned with a great deal more than simply ending their lives.²²⁰ All in all, it appears beyond doubt that *tashhūr* trials had a strong eschatological subtext. When Ghazālī exhorts the sinner to "bring to mind an image of yourself, as you stand naked, uncovered, outcast and ashamed, bewildered and dazed, awaiting the Judgment which will decide your rapture or misery,"²²¹ then this would seem an apt characterization of the state of those subjected to ignominious parading. It appears as if Ibn al-Muslima was

²¹⁵ See André Miquel, *La géographie humaine du monde musulman jusq'au milieu du 11e siècle*, vol. III, *Le milieu naturel* (Paris: Mouton, 1980), 335. Bābak was paraded on an elephant before his execution in 223/838 (see *EI2*, s.v. Bābak, I, 844a [D. Sourdell]), as was the vizier Ibn Baqīyya (see Spuler, *Iran in frühislamischer Zeit*, 372). Another example of a punitive parade on elephants is recorded in Niẓām al-Mulk's *Siyāsatnāma* ("The Story of the Bakers of Ghaznī"), 58.

²¹⁶ Nu'aym b. Ḥammad al-Marwazī, *Kitāb al-Fitan* (Mecca: n.p., [1991]), 403. See further *EI2*, s.v. Dābba, II, 71a (A. Abel); David Cook, *Studies in Muslim Apocalyptic*, 120–1.

²¹⁷ Cf. the notion that the *dajjāl* will appear riding an ass at the end of time: anon., *Baḥr al-fawā'id* (tr. Meisami), 260.

²¹⁸ Ibn al-Jawzī, *Muntazam*, XVI, 38. ²¹⁹ Juzjānī, *Ṭabaqāt-i Nāṣirī* (tr. Raverty), 441–5.

²²⁰ Bell, *Ritual*, 132. ²²¹ Ghazālī, *Iḥyā'*, IV, 514.

fully aware of the analogies between innerworldly and divine justice that his executioners, consciously or not, were enacting. During his parade through Baghdad, he is reported to have recited verse 26 of *sūra* Āl ‘Imrān: “Say, O God, Lord of sovereignty, You give power to whomsoever You wish and You take away power from whomsoever You wish, and You honor whomsoever You wish and You debase whomsoever You wish.” While at first sight, this may appear an apt concluding statement to his career as a courtly diplomat, it is perhaps significant that almost immediately preceding verse 26, in verse 21 of *sūra* Āl ‘Imrān, the Qur’ān speaks of “those who kill the people who call for justice [*ya’murūna bi-l-qisṭi*],” urging the audience of the Qur’ān to “announce to them a painful punishment.” In this light, Ibn al-Muslima’s recitation appears more as an act of resistance, or even a threat of revenge, rather than a fatalistic admission of powerlessness vis-à-vis God’s unfathomable decree.

The vizier’s own little exegesis of his *tashhūr* would be an attempt to revert the punishment to his executioners. *This* is what public punishment as an eschatological drama is about: it seeks to define who punishes whom rightfully, and to establish the limits of legitimate authority of the ruler vis-à-vis those living under his spell. Catherine Bell writes that

[i]t is through ritual . . . that those claiming power demonstrate how their interests are in the natural, real, or fruitful order of things. When effective, the symbolic imagery and structural processes of political ritual – what Roy Rappaport calls its “sanctity” – can transform “the arbitrary and conventional into what appears to be necessary and natural.”²²²

The eschatological idiom used in *tashhūr* processions suggested to the public that the ruling authorities’ exercise of justice was “in the natural, real, or fruitful order of things.” By analogy with God’s court of justice on the Day of Judgment, *tashhūr* acquired a measure of “sanctity,” thereby transforming arbitrary and excessive use of punitive power into what appeared a necessary and natural measure of justice.

However, one ought to guard against assuming too easily that the medieval Muslim audience of *tashhūr* processions was utterly and completely manipulated by those ruling agents or institutions who claimed political authority. Ignominious parading is more than just a ritual of power. *Tashhūr* relied to a significant degree on the active help and consent of the audience. The public participated by insulting the victims or throwing stones and impure items at them. In the case of Sayf al-Dīn Sūrī, the populace of Ghaznā was instrumental in organizing the *tashhūr* procession, in a spontaneous outpouring, it seems, of anger against the foreign usurper. And not all public manifestations of power went smoothly. Measures of discontent with the excessive use of

²²² Bell, *Ritual*, 129, quoting Roy Rappaport, “Liturgies and Lies,” *International Yearbook for Sociology of Knowledge and Religion* 10 (1976), 81.

humiliating violence against the condemned are recorded in the cases of the Ghaznavid vizier Hasanak and the Rūm Saljūq ex-minister (*parwāna*) Taj al-Dīn.²²³ The ritual of public disgrace was not invulnerable to being challenged – even if, as far as the sources tell us, this was only rarely the case.

Earlier in this chapter, the hypothesis was formulated that one important function of myths about the afterlife was to organize thought, to give to a wider audience ideas and categories with which to reflect upon their own precarious life situation. Depictions of hell in the eschatological literature, this study has suggested, grew out of the collective conscience of medieval Muslim society; they were not just the result of the baroque, or perverse, imagination of individual authors, nor did they always imply an attitude of quietism imposed from above. The *tashhūr* ritual follows a similar kind of logic, only this logic is not spelled out in stories, but enacted in real life. *Tashhūr* is belief not taught in the abstract, but played out. Analyses of ritual as drama, or of the performative dimension of ritual, come to mind. Ibn al-Muslima and all the other victims of *tashhūr* are set in a make-believe situation: they are not *really* grilled by hellfire so that their faces turn black, they are not *really* led in procession toward the divine court of justice, and, once arrived, they do not *really* stand naked before their Lord. Nevertheless, to quote Bell again, they are set in “a type of frame that says: this is different, deliberate, and significant – pay attention!” Thus,

by virtue of the way in which the theatrical framework sets . . . words and deeds off from day-to-day reality, the performance is credited with the ability to convey universal truths by means of an experience not readily accessible elsewhere.²²⁴

In conclusion, the public spectacle of *tashhūr* was, at times, a ritual seeking to justify arbitrary uses of power, and it also helped to quench the mob’s lust for scandal and violence. But cumulative evidence indicates that there was more to it. *Tashhūr* did not serve only to prove that power was in the natural order of things, or to titillate the desire of heated-up audiences for a show of brutality. Borrowing a formulation of Johan Huizinga, the historian of medieval Europe, punitive rituals such as *tashhūr* constituted “an important element in the spiritual nourishment of the people.”²²⁵ They buttressed a *Weltanschauung* oriented toward the hereafter and thus helped people to come to grips with the world in which they lived.²²⁶ However, let us not forget

²²³ Ibn Bībī, *Saljūqnāma* (tr. Duda), 204–5 (637/1240 at Ankara). ²²⁴ Bell, *Ritual*, 160.

²²⁵ Johan Huizinga, *The Autumn of the Middle Ages* (1921, Chicago: University of Chicago Press, 1996), 3.

²²⁶ Similar interpretations are given by scholars of medieval European rituals of public disgrace. See Matthias Lentz, “Schmähbriefe und Schandbilder als Medien außergerichtlicher Konfliktbewältigung: von der sozialen Sanktion zur öffentlichen Strafe (14.–16. Jahrhundert),” in Hans Schlosser and Dietmar Willoweit (eds.), *Neue Wege strafrechtsgeschichtlicher Forschung* (Cologne: Böhlau, 1999), 55–81, esp. 57–8, 78; Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France* (Leiden and New York: Brill, 1993), 180.

that *tashhīr* and other forms of public punishment were not only political and religious, but also legal, rituals. Heretofore, the view of the jurists has been absent from the analysis. Part I of this study has shed light on how punishment was looked upon from above, that is, from the perspective of the political and military authorities. Part II has investigated the view from below, that is, how common people and the mass of mainstream believers reflected about punishment. Let us now turn to a third class of people, the jurists of Islam, and take a look at their doctrines of “divinely ordained punishments” (the *ḥudūd*; see chapter 5) and of “discretionary punishment” (*taʿzīr*), in particular *tashhīr* (chapter 6).

PART III

Legal dimensions of punishment

Circumscribing *ḥadd* in Sunnī law

Analogy and punishment in Western and Islamic law

One of the fundamental principles of modern Western criminal law is the prohibition of analogy.¹ The notion is first encountered in constitutions written toward the end of the eighteenth century.² Some decades later, in 1813, the German theorist of criminal law Feuerbach (1775–1833) gave theoretical shape to the concept, famously coining the rule that there can be no legal punishment without a law (*nulla poena sine lege*).³ This “principle of

¹ In logic, the term *analogy* (from Gr. ἀναλογία, “agreement of ratios,” Lat. *proportio*) denotes the resemblance of relations or attributes forming a ground of reasoning: *Oxford English Dictionary* (new ed., Oxford and New York: Oxford University Press, 2000–), s.v. “Analogy.” Analogical reasoning is commonly believed to produce results that are only probable, not certain. According to Immanuel Kant, analogical reasoning cannot generate knowledge, in the sense of an inference from a known to an unknown, but can only illustrate what is already known. See his *The Critique of Judgement* (1781, Oxford: Clarendon, 1928), 136–7. Analogy as a type of reasoning in the law consists in the transfer of a legal qualification from a given case to another “similar” case: Karl Larenz, *Methodenlehre der Rechtswissenschaft* (1960, Berlin: Springer, 1991), 381. Legal analogy is held to give rise to judgment about probabilities, but not to guarantee truth: Cass R. Sunstein, “On Analogical Reasoning,” *Harvard Law Review* 106 (1993), 743–5. The classic treatment of analogy in case law is Edward H. Levi, *An Introduction to Legal Reasoning* ([Chicago]: University of Chicago Press, 1949).

² See the constitution of Virginia and Maryland (1776), followed by the Austrian Criminal Law Code of Emperor Joseph II (1787), the French *Declaration of the Rights of Man* (1789), and the Prussian Allgemeine Landrecht (1794). The *Declaration of the Rights of Man*, § 7, reads “No man may be accused, arrested, or detained except in the cases determined by law, and according to the forms prescribed therein” (quoted in Walter Laqueur and Barry Rubin [eds.], *The Human Rights Reader* [Philadelphia: Temple University Press, 1979], 188). The wording goes back almost verbatim to Cesare Beccaria’s *Dei delitti e delle pene* (1764). See Ronald J. Pestritto, *Founding the Criminal Law: Punishment and Political Thought in the Origins of America* (DeKalb: Northern Illinois University Press, 2000), 62–3. See also Claus Roxin, *Einführung in das Strafrecht und Strafprozeßrecht* (4th ed., Heidelberg: C. F. Müller, 2003), 15–16, 52–3.

³ Feuerbach first formulated this rule in his *Lehrbuch des in Deutschland geltenden peinlichen Rechts* (1801), § 20. See Renée Martinage, *Histoire du droit pénal en Europe* (Paris: Presses universitaires de France, 1998), 80; Uwe Wesel, *Geschichte des Rechts: von den Frühformen bis zum Vertrag von Maastricht* (Munich: Beck, 1997), 450. Histories of criminal law and theory written in English tend to discuss only the Anglo-American legal development, focusing on the ideas of Jeremy Bentham, John S. Mill, and the like, and devote little attention to Feuerbach’s groundbreaking work.

legality” is an important tenet of political liberalism. The prohibition of analogy in criminal matters was developed to protect individual liberty against the encroaching authority of the repressive state apparatus and the arbitrary penal adjudication of the *ancien régime*. At the same time, the doctrine of *nulla poena sine lege* challenged the citizen, whom early nineteenth-century jurists envisioned as an “enlightened” individual, to ponder critically the existing positive law. This development in modern criminal law theory coincided with, and became possible on the grounds of, the emergence of the politically autonomous *citoyen* and the modern nation-state based on a system of codified law.⁴ At first sight, then, it would appear to make little sense to look for analogies to the prohibition of analogy in the criminal law of premodern societies such as medieval Islam.⁵ However, the notion that the law had to be protected from the excesses of the ruling classes was not foreign to the jurists of Islam.

The late “classical” period of Islamic law saw the arrival of a foreign dynasty of Turkish rulers, the Saljūqs, who had few claims to religious legitimacy. In consequence, Islamic jurisprudence (*fiqh*) came into increasing competition with arbitrary uses of repressive power in the hands of the temporal rulers. Especially worrisome to the *fuqahāʾ* (jurists) was the power embodied in *siyāsa*, a concept developed from the fifth/eleventh century onward, which denoted the punitive authority wielded by independent state institutions such as the sultan’s extrajudicial tribunals (*mazālim*) and the police forces (*shihṅagī*, *shurṭa*, and *muḥtasib*).⁶ Sometimes, the problem of *siyāsa* could

⁴ Simon Schama, *Citizens: A Chronicle of the French Revolution* (London: Folio Society, 2004), 858–60; Hervert A. Johnson and Nancy Travis Wolfe, *History of Criminal Justice* (1988, Cincinnati: Anderson, 2003), 141–2.

⁵ Criticisms are sometimes voiced about methodological approaches in the study of Islamic law that depart from Western legal notions. Kevin Reinhart dubs this the “chasing bunnies through the fields” approach in Western studies of Islamic law. See his “Response to Eric Ormsby’s Review of *Before Revelation* in *ILS*, 5.1,” *ILS* 6, 3 (1999), 419. I agree with Reinhart that one should let the Islamic legal tradition speak for itself. However, for outsider students of the tradition, like myself, comparison with the Western tradition can serve as a useful entry to the topic at hand. Similarities and differences may thus become easier to appreciate.

⁶ Cf. pp. 48–60. The concept of *siyāsa* was known to Hanafī legal literature from early times and given shape by the classical authors. See Muḥammad b. al-Ḥasan al-Shaybānī, *al-Jamīʿ al-ṣaḡhīr* (Beirut: ʿAlam al-Kutub, 1406/[1985–6]), I, 294; Sughdī, *Fatāwā*, I, 434; Sarakhsī, *K. al-Mabsūṭ* (Beirut: Dar al-Maʿrifa, 1993), IX, 159, XXVI, 124; Kāsānī, *Badāʾī*, VII, 299; Marghinānī, *Hidāya*, II, 102; Shaykh Niẓām et al., *al-Fatāwā al-ʿalamgīriyya* (Beirut: Dār al-Fikr, 1411/1991), VI, 5. Ibn al-ʿAqīl (d. 513/1119) defined *siyāsa* as the “practices that bring human beings closer to salvation and keep them away from corruption, even if the Prophet did not institute [such practices] and even if no revelation has come down concerning them”: quoted in Ibn Qayyim al-Jawziyya, *al-Ṭuruq al-ḥukmiyya fī l-siyāsa al-sharʿiyya* (Baghdad: [n.p.], 1986), 13. The translation is borrowed from Johansen, “Signs as Evidence,” 181. For the development of the concept of *siyāsa*, see further *EI2*, s.v. *Siyāsa*, IX, 696a (F. Vogel). On the genealogy of the term, see Fawzi Najjar, “*Siyāsa* in Islamic Political Thought,” in Michael E. Marmura (ed.), *Islamic Theology and Philosophy: Studies in Honor of George F. Hourani* (Albany: SUNY Press, 1984), 92–110; Lewis, “*Siyāsa*,” Lewis argues that by the time of Ibn al-Ṭīqtaqā (writing in 701/1302), at the latest, *siyāsa* had come to signify “capital punishment” *tout court*. Cf. Johansen, “Eigentum, Familie und Obrigkeit,” 55.

extend even to the religious courts, since judges too came under the suspicion of serving primarily the mundane ruler's *siyāsa* interests, not the divine law:⁷ if Māwardī repeatedly urged that the judge must be capable of independent legal reasoning (*ijtihād*), it can be inferred that people without training in *fiqh*, but with the appropriate social status and political influence, exercised judgeship into Saljūq times.⁸ Against such odds, the jurists sought to circumscribe criminal justice as much as possible, delimiting it from other realms of law.⁹ Their motivation in this endeavor was twofold. First, the jurists were concerned with protecting the system of divine law against appropriation by the political authorities: the jurists' competence to judge according to *sharī'a* was defended against the authority claimed by the various state jurisdictions. Second, the jurists strove to protect the subjects of political rule: their discussions of *sharī'a* punishments (whether divinely ordained punishment or discretionary punishment, *ta'zīr*) sought to demarcate – a move not entirely unlike the Enlightenment liberal agenda – a space of privacy and immunity of the individual from the kind of justice that the state exercised.

Feuerbach's principle of *nulla poena sine lege* echoes a statement attributed to Abū Ḥanīfa (d. 150/767), commonly considered one of the founding fathers of Islamic jurisprudence: "There is no analogy in the divinely ordained punishments [*lā qiyāsa fī l-ḥudūd*]."¹⁰ An often-cited example of how Abū Ḥanīfa's dictum circumscribes the application of the divinely ordained punishments concerns the punishment for fornication (*zinā*). This is lashing in the case of the unmarried offender or stoning in the case of the offender who

⁷ That jurists (*fuqahā'*) refused to serve as judges in the service of temporal rulers, lest they become corrupted by mundane interests, is a topos in Islamic literature from at least the second/eighth century. See Hallaq, *The Origins and Evolution of Islamic Law*, 83–5, 180–2; Mez, *Renaissance*, 217–20. With regard to the classical period, Halm, *Ausbreitung*, 23, notes that the local leader of a school of law (*ra'īs al-madhhab*) – an office that first appears in the beginning of the fifth/eleventh century in Khurasān – was not necessarily a high-ranking judge, "as in general the actual application of the law is something different from the disputation of the *fuqahā'* in the legal schools."

⁸ Tyan, *Histoire*, I, 243; Halm, *Ausbreitung*, 27.

⁹ Baber Johansen has shown that the rules of procedure in classical Muslim criminal law are significantly stricter than in other fields of the law. On the one hand, this shows that, contrary to Schacht's assumption, Islamic criminal law has its own characteristics that define it as its own branch of the law; on the other hand, it suggests that the jurists sought to protect the individual from arbitrary punishment. See Johansen, "Zum Prozeßrecht der 'Uqūbat," 421–33; Johansen, "The Muslim *fiqh* as a Sacred Law," 63.

¹⁰ Aḥmad b. 'Alī al-Jaṣṣāṣ, *al-Fuṣūl fī l-uṣūl* (Kuwait: Wizārat al-Awqāf wa-l-Shu'ūn al-Dīniyya, 1405/[1984–5]), I, 173, 312, II, 318; Sarakhsī, *Mabsūṭ*, IX, 78: *al-ḥadd bi-l-qiyās lā yathbut*; Kāsānī, *Badā'ī*, VII, 34: *al-ḥadd lā yu'rafu illā bi-l-tawqīf*; Abū l-Ḥasan 'Alī b. Muḥammad al-Paḥḍawī, *Uṣūl al-fiqh* (Karachi: Maṭba'at Jāwīd Barīs, n.d.), I, 75, 196. Other witnesses for the Ḥanafī position are Sam'ānī, *Qawā'ir al-adilla*, IV, 88; Ghazālī, *al-Mankhūl min ta'līqāt al-uṣūl* (Damascus: Dār al-Fikr, n.d.), 489; Ghazālī, *Mustasfā* (ed. Shāfi), 331; Rāzī, *al-Maḥṣūl fī 'ilm al-uṣūl* (Beirut: Mu'assasat al-Risāla, 1412/1992), V, 349; Ibn Ḥazm, *al-Iḥkām fī uṣūl al-aḥkām* (Cairo: Dār al-Ḥadīth, 1404/1984), VII, 369; Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfi, *al-Dhakhīra* (Beirut: Dār al-Gharb, 1994), I, 133.

is, or was previously, married (*muḥṣan*).¹¹ For sodomy (*liwāt*),¹² on the other hand, no Qur'anic verse, Prophetic tradition, or consensus of the scholars was readily available, or sufficiently well attested, to serve as a legal qualification (*ḥukm*).¹³ Abū Ḥanīfa's rejection of analogy in the divinely ordained punishments – a move which did not go unchallenged – has significant consequences: it makes the punishment for fornication, by way of analogical reasoning, inapplicable to sodomy. To give another example, if analogy in the divinely ordained punishment is rejected, the grave-robber (*nabbāsh*) and the pickpocket (*mukhtalis*) cannot be punished in analogy to the thief (*sāriq*), who, according to Qur'an 5:42, suffers amputation of the hand.

The issue of the applicability of analogy in the divinely ordained punishments is a subchapter in the debate in Islamic legal theory about the limits of independent legal reasoning (*ijtihād*). Analogy was commonly viewed as the most typical manifestation of *ijtihād*.¹⁴ While both Zāhirīs and Shī'īs rejected analogy altogether, the four Sunnī schools of law (Ḥanafīs, Shāfi'īs, Mālikīs, and Ḥanbalīs) embraced the concept, even though they differed in numerous details. The Ḥanafīs were the only Sunnī school that rejected analogical reasoning in the divinely ordained punishments. In this, they were most vociferously opposed by the Shāfi'īs. However, there was considerable difference of opinion, not only among the schools of law, but also within each of them. The development of Islamic legal theory (*uṣūl al-fiqh*), which offered

¹¹ The term *muḥṣan* means the person who is “adult, free, Muslim (except in Shāfi'ī law, where a *dhimmī* can also be *muḥṣan*) and having previously enjoyed legitimate sexual relations in matrimony (regardless of whether the matrimony still exists).” See *EI2*, s.v. *Zinā*, XI, 509b (R. Peters).

¹² Schmitt, “*Liwāt* in *Fiqh*,” 49–51 and passim, has argued with force that the meaning of *liwāt* is “anal intercourse,” not “homosexuality.” Schmitt criticizes translations of *liwāt* as “homosexuality” because they assume that people in the premodern Islamic world relied on the same mechanisms of gender construction as in post-Enlightenment Europe, for the evolution of which see Michel Foucault, *Histoire de la sexualité* (Paris: Gallimard, 1976–). *Liwāt*, as Schmitt argues, refers to an act, or type of action, not to a disposition of character. See also Khaled el-Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500–1800* (Chicago: University of Chicago Press, 2005), 5–8, passim. I will follow Schmitt in translating *liwāt* as “sodomy” rather than “homosexuality.” I think, however, that to take *liwāt* uniquely to mean “anal intercourse,” whether between men or between men and women, can also be wrong-headed. See the statement in Shirāzī, *al-Muḥadhdhab fī fiqh al-Imām al-Shāfi'ī* (Beirut: Dār al-Fikr, n.d.), I, 216: “Be it penetration of the anus, *liwāt*, or bestiality: they are all like penetration of the vagina [i.e., in respect to the punishment these activities incur] [*sīwā wa-l-waṭ' fī l-dubr wa-l-liwāt wa-ityān al-bahīma ka l-waṭ' fī l-qubḥ*].” Note that Shirāzī makes a clear distinction between anal intercourse (*al-waṭ' fī l-dubr*) and *liwāt*, which I think refers here only to acts of sodomy between men.

¹³ Despite what is claimed in *EI2*, s.v. *Liwāt*, V, 776b–779b (C. Pellat and eds.). The article focuses on the cultural and literary history of homosexuality rather than on its legal aspects. For a discussion of the relevant *ḥadīths* and issues involving consensus (*ijmā'*) about the punishment for sodomy, see below.

¹⁴ Shāfi'ī even held the two terms to be synonyms. See Aron Zysow, “The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory” (Ph.D. dissertation, Harvard University, 1984), 460. However, Hallaq, *The Origins and Evolution of Islamic Law*, 115, comments that “this jurist seems to have been alone in equating the two concepts.”

definitions of what constituted proper analogical reasoning, reached a certain climax toward the end of the classical period of Islamic jurisprudence (which more or less coincides with the Saljūq period), in works such as Abū Ishāq al-Shīrāzī's (d. 476/1083) *K. al-Lum'a*, Pazdawī's (d. 482/1089) *Kanz al-wuṣūl*, and Ibn 'Aqīl's (d. 513/1119) *al-Wāḍiḥ fī 'uṣūl al-fiqh*. Nevertheless, Islamic law remained a flexible jurists' law: whatever individual jurists had decided in accordance with the arduous task of independent legal reasoning (*ijtihād*), in theory these decisions were not binding for following generations, whether of the same school or not.¹⁵ Codification of *shar'ā* norms in the Islamic world began only under the influence of Western legal systems in the nineteenth century. Until that time, traditions of dispute over individual points, despite attempts to "freeze" certain *fiqh* doctrines, were never fully settled. As a leading authority in the study of Islamic legal history puts it, "[e]ven old solutions to old problems were constantly rehabilitated and reasoned anew."¹⁶ For example, as to whether sodomy was to be judged in analogy to fornication, a prominent Ḥanafī author of the ninth/fifteenth century could state that "the truth is that everybody disagrees about it."¹⁷

The Ḥanafī rejection of analogical reasoning (*qiyās*) in the divinely ordained punishments

Under the Saljūqs, the debate over whether divinely ordained punishments are amenable to analogy, and thus transferable to similar cases, appears to have occurred essentially between Shāfi'ī and Ḥanafī jurists. One of the main witnesses for this controversy is Abū l-Muzaffar Maṣṣūr al-Sam'ānī (d. 489/1096).¹⁸ Sam'ānī appears particularly suited to explain the differences between the Ḥanafīs and Shāfi'īs in this matter, given that he converted to Shāfi'ism in 468/1075–6, after having studied Ḥanafī *fiqh* in both Marv and Baghdad.¹⁹ This almost caused a public riot (*fitna*) in his city of birth, Marv, because the Ḥanafī scholarly establishment, among them Abū l-Muzaffar's

¹⁵ See Johansen, "The Muslim *Fiqh* as a Sacred Law," 37–8: "The legitimacy of dissent . . . is a basic principle of the *fiqh* . . . as long as the opinions of the scholars differ their dissent (*ikhtilāf*) entitles each and every scholar to derive legal or ethical norms on the basis of the exertion of his or her own capacity of reasoning (*ijtihād*)."

¹⁶ Hallaq, *The Origins and Evolution of Islamic Law*, 149; Bernard Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amīdī* (Salt Lake City: University of Utah Press, 1992), 740.

¹⁷ Ibn al-Humām, *Fath al-qaḍir*, V, 263.

¹⁸ He was the grandfather of the better-known Abū Sa'd al-Sam'ānī (d. 562/1166), the author of the *Kitāb al-Ansāb*. See *EI2*, s.v. al-Sam'ānī, Abū Sa'd, VIII, 1024b–1025b (R. Sellheim).

¹⁹ Halm, *Ausbreitung*, 85–7, has conveniently collected the information on Abū l-Muzaffar's biography. See also Muḥammad Ḥasan Haytu's introduction to his edition of the *muqaddima* of Sam'ānī's *Qawāṭif al-adilla*, 11–15. Abū l-Muzaffar al-Sam'ānī also wrote, among other works, a Qur'ān commentary which was used in part II of this study. Abū l-Muzaffar is not the only famous case of conversion from Ḥanafism to Shāfi'ism in the period. Abū Ishāq al-Shīrāzī was also a Ḥanafī at first, and even taught Abū l-Muzaffar at Baghdad. See Halm, *Ausbreitung*, 86.

brother Abū l-Qāsim ‘Alī, felt that their position as the most influential school of law in town was threatened. Abū l-Muẓaffar had to leave Marv. However, he returned not long after to reconcile himself with the Ḥanafīs, becoming a professor at the Niẓāmiyya *madrasa* and even tutoring the son of his (Ḥanafī) brother in *fiqh*.²⁰

In the chapter on the conditions for the applicability of analogy in his work on legal methodology, the *Qawāṭi’ al-adilla fī ‘ilm al-uṣūl* (“Decisive Proofs in Legal Methodology”), Sam‘ānī relates that the Shāfi‘īs

part ways with the followers of Abū Ḥanifa in this well-known issue [*hādhihi l-mas’ala al-ma’rūfa*], that is, the issue of the applicability of analogy in the divinely ordained punishments [*hudūd*], expiatory acts [*kaffārāt*], and decreed numerical objects [*maqādir*] . . . According to the school of Shāfi‘ī, it is permissible to establish expiatory acts and divinely ordained punishments on the basis of analogy. According to the followers of Abū Ḥanifa, it is not.²¹

As this passage indicates, the divinely ordained punishments were not the only realm of the law in which the Ḥanafīs rejected analogical reasoning. Included in the problem were other fields of Islamic normativity as well. *Maqādir*, or *muqaddarāt* as they are more commonly called,²² literally means “things decreed”; however, in the present context, the term refers more specifically to “things decreed by God.” The term can be specified further as carrying the notion of a numerical definition, as my translation as “decreed numerical objects” suggests. Few, if any, exhaustive lists of the *muqaddarāt* appear to exist in Sunnī legal literature.²³ They are sometimes conceived to *encompass*

²⁰ Halm, *Ausbreitung*, 86.

²¹ Sam‘ānī, *Qawāṭi’ al-adilla*, IV, 88. For a short English summary of the problem, see Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991), 221–3; Ahmad Hasan, *Analogical Reasoning in Islamic Jurisprudence: A Study of the Juridical Principle of Qiyas* (Islamabad: Islamic Research Institute, 1986), 67–70.

²² Rāzī, *Maḥṣūl*, V, 349, also uses the term *taqdīrāt*.

²³ The most complete list, as far as I can see, is found in Nawawī, *al-Majmū’ sharḥ al-Muhadhdhab*, I, 183–4. Nawawī distinguishes between three kinds of *muqaddarāt*: first, a set of norms decreed by God in order to establish a precise definition and about which there is no difference of opinion among the jurists (*taqdīruhu li-l-tahdīd bi-lā khilāf*); this is the biggest group, including the *hudūd*. Second is a set of norms decreed by God in order to establish a limit within which acts are to be judged and about which there is no difference of opinion (*li-l-taqrib bi-lā khilāf*); this appears to refer to rules such as that pregnancy can last as long as two years. Nawawī himself gives the example of “the age of the manumitted slave [*ṣinn al-raḡiq al-musallam*].” Finally, there is a third set about which there is difference of opinion. Similar taxonomies appear in Muḥammad b. Aḥmad al-Khatīb al-Shirbīnī’s (d. 978/1570) commentary to Nawawī’s *Minhāj al-īlābīn*, the *Mughnī l-muḥtāj ilā ma’rifat ma’ānī alfāz al-Minhāj* (Beirut: Dār al-Fikr, n.d.), I, 26; Suyūṭī, *al-Ashbāh wa-l-naẓā’ir fī qawā’id wa-furū’ fiqh al-Shāfi’iyya* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1403/[1982–3]), I, 393–4. Also counted among the *muqaddarāt* are the portions of inheritance (*farā’id*). See the legal dictionaries of Aḥmad b. Muḥammad al-Fayyūmī al-Muqrī, *al-Miṣbāḥ al-munīr* (Beirut: al-Maktaba al-‘Ilmiyya, [1978]), II, 469; Abū l-Baqā’ Ayyūb b. Mūsā al-Ḥusaynī al-Kaffawī, *al-Kulliyāt mu’jam fī al-muṣṭalahāt wa-l-furūq al-lughawiyya* (Beirut: Mu’assasat al-Risāla, 1419/1998), I, 690.

both expiatory acts (*kaffārāt*)²⁴ and the divinely ordained punishments.²⁵ *Ḥudūd* and *kaffārāt* were often viewed in close conceptual proximity to each other; some thought that to suffer the former constituted a variety of the latter.²⁶ Expiatory acts are actions undertaken to atone for (usually minor) infractions against norms of the divine law, for example, manumission of a slave in atonement for sexual intercourse during the day in Ramaḍān. The divinely ordained punishments include stoning and lashing for the fornicator, gibbeting and execution for the highway-robber, amputation of the hand for the thief, flogging of the person who falsely accuses others of fornication, and flogging of the wine-drinker; execution of the apostate and the rebel are also sometimes counted among the divinely ordained punishments.²⁷ Also included under the *muqaddarāt* are the so-called dispensations (*rukhaṣ*). These include all licenses given by God to behave in ways that are against the law under regular circumstances, for example, eating meat that has not

²⁴ Fakhr al-Dīn ʿUthmān b. ʿAlī al-Zaylaʿī, *Tabayīn al-ḥaqāʾiq* (Cairo: Dār al-Kutub al-Islāmiyya, 1313/[1895–6]), VI, 100.

²⁵ Peters states that the *ḥudūd* are defined as “fixed, mandatory punishments (*ʿuqūbāt muqaddara*).” See his *Crime and Punishment*, 53. Peters adds, however, that for the Ḥanafites and Shīʿites another element in the definition is of greater importance, namely, that *ḥadd* crimes are a violation of a claim of God (*ḥaqq Allāh*). Therefore, they can never be waived by men. For Ḥanbalī definitions, see the commentaries on Ibn Qudāma’s (d. 620/1223) *al-Muqṣṣ fī fiqh al-Imām Ahmad b. Ḥanbal* by Abū ʿAbd Allāh Muḥammad b. Abī l-Faṭḥ al-Baʿlī (Ḥanbalī), *al-Muḥṣi ʿalā abwāb al-Muqṣṣ* (Beirut: al-Maktab al-Islāmī, 1401/1981), I, 370; Abū Ishāq Ibrāhīm b. Muḥammad Ibn al-Muflīḥ, *al-Mubḍī fī sharḥ al-Muqṣṣ* (Beirut: al-Maktab al-Islāmī, 1974–), IX, 43.

²⁶ Shāfiʿī (d. 204/820), in his *K. al-Umm*, devotes a chapter to demonstrating that “the divinely ordained punishments are expiatory acts [*inna l-ḥudūd kaffārāt*].” See Abū ʿAbd Allāh Muḥammad b. Idrīs al-Shāfiʿī, *K. al-Umm* (2nd ed., Beirut: Dār al-Maʿrifā, 1393/[1973]), VI, 138. This equation was based on Prophetic traditions such as the one stating that “it is likely that the divinely ordained punishments were revealed as expiatory acts for the sins [*laʿalla l-ḥudūd nazalat kaffāratan li-l-dhunūb*].” See *ibid.*, *Umm*, VI, 138. This is a tradition which, besides being somewhat vague, never entered the standard collections. Alone among the more well-known collectors, Bayhaqī quotes this *ḥadīth* – from Shāfiʿī – in *al-Sunan al-kubrā*, VIII, 328. However, a similar *ḥadīth* declaring this-worldly punishment for polytheism, theft, fornication, killing of infants, slander (*buhtān*), and rebellion against the law (*lā taʿṣū fī maʿrūfīn*) a *kaffāra* can be found in Bukhārī, *Ṣaḥīḥ*, I, 15, IV, 1857, *passim*; Muslim, *Ṣaḥīḥ*, III, 1333; Tirmidhī, *Sunan*, IV, 45; Ibn Ḥanbal, *Musnad*, V, 314. That *ḥadd* punishment serves as atonement is further demonstrated by Shāfiʿī, *Umm*, VII, 46: the convicted slanderer’s (*qādhif*) testimony is not accepted before he is punished with *ḥadd*, for as long as he is not punished he remains unfit for testimony (*sharru ḥālan*). For further references in the *uṣūl al-fiqh* literature, see ʿIzz al-Dīn Abū Muḥammad ʿAbd al-ʿAzīz b. ʿAbd al-Salām al-Sulamī, *Qawāʾid al-aḥkām fī maṣāliḥ al-anām* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), I, 35. The corpse of the person executed on the basis of *ḥadd* receives the same funerary rites as that of others. See Gräf, “Probleme der Todesstrafe im Islam,” 92. However, against such views, the Ḥanafis argued that atonement is brought about not by application of the divinely ordained punishments, but only by repentance (*tawba*) in the *forum internum*. See Peters, *Crime and Punishment*, 31, 53–4.

²⁷ I cannot go into the details of *ḥadd* punishment here, which at any rate are relatively well known. For a short introduction, see *EI2*, s.v. Ḥadd, III, 20a (J. Schacht, B. Carra de Vaux, and A. M. Goichon). For a fuller discussion, see Peters, *Crime and Punishment*, 53–65. My translation of *ḥadd* as “divinely ordained punishment” seeks to convey the notion that this is a sanction that is imposed (*muqaddar*) upon man by the sovereign decree of God.

been ritually slaughtered if this is indispensable for survival.²⁸ According to the Ḥanafīs, all “things decreed by God” taken together had a different status in terms of the permissibility of analogy. As the Ḥanafī Abū l-Ḥusayn al-Baṣrī (d. 436/1044) notes,

the debate between people is this: is there in the divine law a group of issues for which it is known that nothing can show the factor that occasions the rule that governs them [*jumlatun min al-masā'il yu'lamu annhu lā yajūzu an tadulla dalālatun 'alā 'illati aḥkāmihā*]? If so, to use analogy is rejected in *all* of them. Or is this not the case, but instead is it necessary to examine cases one by one?²⁹

Baṣrī's statement deploys the technical vocabulary of legal methodology; terms such as “rule, norm [*ḥukm*],” “occasioning factor [*'illa*],” or “proof, indicator [*dalāla*]” each have a complicated genealogy in Islamic jurisprudence. They defy easy translation. What can be retained, for the moment, from Baṣrī's account of the problematic is a certain reluctance on the part of the Ḥanafīs to inquire into the logical structure of *some* norms of the divine law, those which I have identified as the *muqaddarāt*, including the expiatory acts and divinely ordained punishments. But just how could Abū Ḥanīfa and his followers claim to know that some issues in the divine law, but not others, were not amenable to analogy? How were these issues different from others in the law?

Abū Ḥanīfa's original position is not easily reconstructed from the later sources, which impute to him a variety of reasons. Often it appears that Shāfi'ī polemics such as those of Sam'ānī, Ghazālī, Rāzī, or Amīdī give clearer accounts of the Ḥanafīs' strategies of argumentation than do the Ḥanafī authors themselves. As noted above, what characterizes the Ḥanafīs' position is a reluctance to analogize God's revealed regulations in well-delimited contexts and when precise or even numerical indications about the norm are given in the Qur'ān, Prophetic tradition, or consensus. Reasons for this reluctance may be grouped under three headings: theological, epistemological, and terminological.

Theological premises

How did Muslim theologians think about the concept of “things decreed by God”? It may well be that the term *muqaddarāt* will reveal itself to have different meanings in theology and law. However, as Hallaq states, “*uṣūl al-fiqh* was not impervious to theological influences,” and he asserts that “[I]aw presupposed . . . theological conclusions and went on to build on them.”³⁰ It is

²⁸ See *EI2*, s.v. Rukḥṣa, VIII, 595b (R. Peters), for more examples.

²⁹ Abū l-Ḥusayn Muḥammad b. 'Alī al-Baṣrī, *al-Mu'tamad* (Beirut: Dār al-Kutub al-'Ilmiyya, 1403/1983), II, 265. A simplified version can be found in Rāzī, *Maḥṣūl*, V, 349.

³⁰ Hallaq, *The Origins and Evolution of Islamic Law*, 129. Baber Johansen has stressed a different aspect of the relationship between theology and law in the formative periods of Islam, namely,

in this spirit that I would like to note a couple of suggestive parallels. In Sunnī theology, the “things decreed by God,” according to a well-known tradition, are fourfold: the sustenance that God grants, the moment of death that God imposes, the actions predetermined by God, and a life of happiness or of affliction that God bestows on man.³¹ There are also other *muqaddarāt* that concern the particulars of human life. However, these particulars are so manifold that, as a late (twelfth-/eighteenth-century) authority suggested, they are impossible to count.³² The root *q-d-r* has a prominent place in Muslim theological thinking, since it conveys the idea of God’s decree, or even of predestination (*qadar*), based on God’s absolute power (*qudra*) over creation.³³

According to what became the predominant line of thinking in Muslim theology, God wills every single event anew. In other words, He is the direct cause of everything. This atomistic position denies any laws of causality existing outside God. As is well known, Ghazālī boldly reaffirmed this view, arguing that there is no necessary connection between what man calls cause and effect.³⁴ A related notion is that men cannot consider themselves the cause of their actions. Thus, in theological statements about the human capacity to act the root *q-d-r* also plays a prominent role. Ash‘arī theology, which most Shāfi‘īs followed, is famous for stressing God’s *qadar* over human acts. Ash‘arī’s (d. 324/935) theory of “acquisition [*iktisāb*]” largely divests man of the power to act autonomously; God creates the power for every action in man in a process of *creatio continua*. The Māturīdī school of theology, to which a majority of Ḥanafī jurists adhered, gave man a somewhat wider margin of freedom of action. However, both Ash‘arīs and Māturīdīs maintained that

that *fiqh* specialists increasingly tended to exclude theologians from the consensus of their discipline, and that “*fiqh* and theology came to differ in essential points.” See his “The Muslim *Fiqh* as a Sacred Law,” 3, 6.

³¹ Bukhārī, *Ṣaḥīḥ*, III, 1175, 1212; Muslim, *Ṣaḥīḥ*, IV, 2036; Tirmidhī, *Sunan*, IV, 446. For an analysis of the theological milieu in which this predestinarian tradition originated, see van Ess, *Zwischen Ḥadīth und Theologie* (Berlin: de Gruyter, 1975). ‘Abd al-Ra‘ūf al-Munāwī calls these four elements of predestination (actions, sustenance, moment of death, happiness or sorrow) *muqaddarāt* in the general sense. See his *Fayḍ al-qadīr*, V, 23. Munāwī writes about this topic in the context of his commentary to the well-known Prophetic tradition “everything with measure [*kullu shay’ bi-qadr*].” See Muslim, *Ṣaḥīḥ*, IV, 2045; Abū ‘Abd Allāh Mālik b. Anas, *al-Muwatta’* (Cairo: Dār Iḥyā’ al-Turāth al-‘Arabī, n.d.), II, 899; Ibn Ḥanbal, *Musnad*, II, 110; Bayhaqī, *al-Sunan al-kubrā*, X, 205; Muttaqī, *Kanz al-ummāl*, I, 178.

³² Munāwī, *Fayḍ al-qadīr*, V, 23.

³³ According to ‘Alī b. Muḥammad al-Jurjānī (d. 816/1413), *qadar* is “the relationship of the essential will with things in their particular realization.” See his *al-Ta’rīfāt* (Leipzig: Sumptibus F. C. G. Vogelii, 1845), 181, quoted in *EI2*, s.v. al-ḳaḍā’ wa-l-ḳadar, IV, 365a (L. Gardet).

³⁴ Harry Austryn Wolfson, *The Philosophy of the Kalam* (Cambridge: Harvard University Press, 1976), 544. For Ghazālī’s teacher Abū l-Ma‘ālī ‘Abd al-Malik al-Juwaynī, the Imām al-Haramayn (d. 478/1085), see Tilman Nagel, *Die Festung des Glaubens: Triumph und Scheitern des islamischen Rationalismus in II. Jahrhundert* (Munich: Beck, 1988), esp. 9–14, 85, 361. For a succinct summary of the development of Islamic ontology by the *mutakallimūn*, see Johansen, “The Muslim *Fiqh* as a Sacred Law,” 10–11.

ultimately “the acts of man are created by God and subject to His will and decree.”³⁵

This theology – postulating the human incapacity to understand the causes of God’s sovereign imposition of life’s fundamental conditions – bears a certain resemblance, or elective affinity, with the Ḥanafī position that the *muqaddarāt* in the law are “things whose purpose cannot be apprehended in order to infer judgments [*al-umūru l-muqaddarāti l-laī lā yumkinu ta’aqqulu l-ma’nā li-l-taqdīr*],”³⁶ or things that “escape the human mind [*al-‘uqūl lā tahtadī ilayhā*].”³⁷ The *muqaddarāt* are characterized by the simple imposition of a norm, without specification of either the concrete reason or the larger purpose (*ḥikma*) that lies behind the norm. Instead, the *muqaddarāt* are, as it were, “givens.” Analogical reasoning in the law, on the other hand, requires the jurist to explain, by a process of independent legal reasoning, why a certain factor (*‘illa*) occasions the original rule (*ḥukm al-aṣl*), and with what purpose, and then to investigate whether this occasioning factor also occurs in the case under examination, that is, the novel case. Consequently, the argument goes, the *muqaddarāt* fall outside analogy’s scope. According to Sam‘ānī, the Ḥanafīs argue that

the divinely ordained punishments were revealed in order to deter the sinner and prevent him [from committing the sin] . . . What deters man from sinning . . . is known only to God. [This is because] sometimes, man is deterred [from sinning] by light punishment, and sometimes he may not be deterred by a great punishment. It is inconceivable that anybody except God knows the quantity of that which produces deterrence.³⁸

Sam‘ānī reports similar strategies of the Ḥanafīs to explain why the causal structure of divinely ordained punishments is incomprehensible to man. The Ḥanafīs argued that the divinely ordained punishments serve the “greater good” of humankind (*maṣāliḥ li-l-‘ibād*). This, however, is a concept that eludes the limited human capacity to reason. Thus, it cannot be subjected to the fallible human endeavor to analogize.³⁹ The Ḥanafīs also claimed that the divinely ordained punishments are meant as a retribution for sins, but that the precise gravity of sins is known only to God. Therefore, one cannot analogize the punishment of one sin to another sin.⁴⁰

³⁵ *EI2*, s.v. Māturīdī, VI, 847a (W. Madelung); Gimaret, *La doctrine d’al-Ash‘arī*, 388; Johansen, “The Muslim *Fiqh* as a Sacred Law,” 16. The anonymous sixth-/twelfth-century author of the *Baḥr al-fawā’id* (tr. Meisami), 259, states that the law forbids discussion of divine destiny and decree (*qaḍā wa-qadr*), “for God’s power is concealed from men [*qudrat-i khudāy az khalq pūshīda ast*].”

³⁶ Sayf al-Dīn Abū l-Ḥasan ‘Alī b. Muḥammad al-Āmidī, *al-Iḥkām fī uṣūl al-aḥkām* (Beirut: Dār al-Kitāb al-‘Arabī, 1404/1983), IV, 65.

³⁷ Rāzī, *Maḥṣūl*, V, 353. For Ḥanafī references, see Pazdawī, *Uṣūl al-fiqh*, IV, 1643; Ibn al-Humām, *Fath al-qadīr*, II, 35, III, 319, 443; Ibn ‘Abidīn, *Ḥāshiyā*, III, 210, VI, 407. Qārī, *Mirqāt al-maṣāliḥ*, III, 384, reports this principle from Marghinānī and Ṭahāwī as well.

³⁸ Sam‘ānī, *Qawā’id al-adilla*, IV, 93. ³⁹ *Ibid.*

⁴⁰ *Ibid.*; also reported in Āmidī, *Iḥkām*, IV, 66.

As for the other *muqaddarāt*, for example, expiatory acts, Ibn al-Turkumānī (d. c. 745/1344) relates from his fellow Ḥanafīs (*aṣḥāb al-raʿy*) that they do not accept expiatory acts “except where God has decreed them,” and he goes on to explain that “nothing can be assimilated with them [*lā yajūzu l-tamthīl ʿalayhā*], and nobody may impose a duty [of this kind] on a Muslim except on the basis of the Qurʾān, *sunna*, and consensus” – but not, as Mārdīnī implies, on the basis of analogy.⁴¹ As for dispensation (*rukhaṣ*), the Ḥanafīs reasoned that they are “a gift from God, and one cannot decontextualize them [*lā yuʿdalu bihā ʿan mawāḍiʿihā*].”⁴² To know God’s purpose in defining a set of acts as expiatory or to understand why He gifted certain dispensations is as impossible as grasping why God decrees a certain moment of death but not another.

Thus, it could be said that all legal regulations that came to be subsumed under the loose category of *muqaddarāt* have one important feature in common: they all illustrate God’s unfathomable purpose in connecting what man calls “cause” with what man calls “result.” There is an element of reservation vis-à-vis God’s sovereign command in the Ḥanafīs’ rejection of analogy in the *ḥudūd*. As has been noted above, the denial of causality was first and foremost a characteristic of Ashʿarite theology, traditionally the province of the Shāfiʿites. Consequently, one would expect the Shāfiʿīs to be more cautious in specifying a cause, or *ratio legis* (*ʿilla*), for the *muqaddarāt*. Surprisingly, however, it is precisely the Shāfiʿīs who embraced analogy in the *muqaddarāt*. That this is in some tension with their adherence to Ashʿarī theology was duly pointed out to them by their opponents, for how could the Shāfiʿīs espouse a theology that denied causality while at the same time claiming that they could apprehend the causal logics of legal statutes, especially of the *muqaddarāt*?⁴³ This question raises fundamental epistemological problems: to what degree does the law depend on an exact knowledge of God’s intent in revealing the law, and to what extent can God’s intent be known? Is it necessary for the jurist to know with certainty whether the law as he formulates it is in agreement with God’s will, or can he content himself with lesser degrees of knowledge, such as probability?

⁴¹ ʿAlī b. ʿUthmān al-Mārdīnī Ibn al-Turkumānī, *al-Jawhar al-naqī* (Hyderabad: Maṭbaʿat Majlis Dāʾirat al-Maʾārif al-Nizāmiyya, 1344–56/[1925–37]), VIII, 132.

⁴² Rāzī, *Maḥṣūl*, V, 353.

⁴³ Zysow, “Economy of Certainty,” 341–2, refers to a defense written by Muḥammad b. ʿAbd al-Karīm al-Shahraṣṭānī, *Nihāyat al-aqdām fī ʿilm al-kalām*, 374 (Arabic), 120 (English). See also Shīrāzī, *al-Lumaʿ fī uṣūl al-fiqh* (tr. Chaumont), 263 n. 40. Chaumont comments that “[i]t is rather surprising that Shīrāzī suggests here that behind every norm established by the Lawgiver, there is an objective *wajh al-ḥikma* (whether or not this *wajh al-ḥikma* can be known by humans). This is especially so since . . . he embraces, without any reservation, the Ashʿarite view of creation, namely that ‘God does what He wills, and He makes laws as He desires.’”

Epistemological aspects

The jurists by and large concurred that analogical reasoning could not produce more than great probability (*ghalabat al-zann*).⁴⁴ Probability in the law, with few exceptions, was accepted as a given reality of the human interpretive endeavor to understand God's intent in revealing His law to mankind.⁴⁵ The Ḥanafīs were no exception to this. They agreed that certainty is not a precondition for declaring acts obligatory or permissible.⁴⁶ Analogical reasoning, they argued, is one of the accepted proofs among the "sources" of the law (*ḥujja aṣliyya*), even if it cannot be considered a method used to arrive at certain knowledge (*'ilm yaqīnī*).⁴⁷ After all, the Ḥanafīs, from early on, were known as avid defenders of analogical – that is, probabilistic – reasoning in the law.⁴⁸

However, there was debate as to exactly what degree probability could be admitted into the law, or to what precise extent analogy could be considered a sound basis for inferring norms. The applicability of analogy in the divinely ordained punishments was one of the points of contention in this debate that demarcated the dividing line between the Ḥanafīs and the Shāfi'īs.

One of the Shāfi'īs' answers to the Ḥanafī claim that the divinely ordained punishments occupy a special epistemological status in the law was rather pragmatic. They simply stated that the Ḥanafīs' claim was not true. The *muqaddarāt* were simply not different from the rest of the revealed ordinances, and therefore indeed amenable to analogy. Indeed, as I have noted earlier, no agreed-upon criteria for what constituted *muqaddarāt* appears to have existed. The Shāfi'īs imputed arbitrariness to the Ḥanafīs in choosing to set apart what they considered to constitute the *muqaddarāt*, but not other realms of the law.⁴⁹ As Sam'ānī polemically states,

they do not build the law on sound methodological principles. Rather, they have conveniently defined the issues [*waqda'ū l-masā'il*] according to what has seemed correct to them [*tarā'at lahum*]. Then, however, with reference to the aforementioned issues [the divinely ordained punishments and expiatory acts], something else has seemed

⁴⁴ Sarakhsī, *al-Uṣūl*, II, 139, 140; Rāzī, *Maḥṣūl*, V, 352. Norms derived from analogy (unlike those derived through syllogism) can never be said to be logically waterproof. The *ratio legis* (*'illa*) is a construct that always carries the probability of being false (*shubhat al-aṣl*). See *EI2*, s.v. *ḳiyās*, V, 238a (M. Bernard).

⁴⁵ Bernard Weiss, *The Spirit of Islamic Law* (Athens: University of Georgia Press, 1998), 92; Wael Hallaq, "On Inductive Corroboration, Probability and Certainty in Sunnī Legal Thought," in Nicholas Heer (ed.), *Islamic Law and Jurisprudence: Studies in Honor of Farhad J. Ziadeh* (Seattle: University of Washington Press, 1990), 6; Hallaq, *The Origins and Evolution of Islamic Law*, 130.

⁴⁶ Sarakhsī, *Uṣūl*, II, 139: "ilm al-yaqīn laysa bi-sharṭin li-wujūb al-'amal wa-lā li-jawāzihi."

⁴⁷ *Ibid.*, II, 140. Among the four "sources [*uṣūl*]" of the law, only the Qur'ān, sufficiently attested (*mutawātir*) Prophetic tradition, and consensus can lead to absolute certainty (*'ilm yaqīnī*). See Johansen, "Verité et torture," 148.

⁴⁸ See Hallaq, *The Origins and Evolution of Islamic Law*, 114. ⁴⁹ Ghazālī, *Mustaṣfā*, II, 91.

correct to them, and so they have judged them to have different norms [*fa-ḥakamūhā bi-ghayr tilka l-aḥkām*].⁵⁰

According to Sam‘ānī, if one accepts that analogy is one of the sound proofs in jurisprudential reasoning that God has given to mankind (*al-qiyās datīlu llāh*),⁵¹ there is no *a priori* reason why analogy should be inoperative in some cases, but not in others. Clearly the Shāfi‘īs felt fewer qualms about subjecting “things decreed by God” to analogical reasoning. As Sam‘ānī explains,

the opinion on which we rely is that the proofs showing the correctness of analogy apply *in general* [*fī l-jumla*]. It is not the case that there is one realm of the law [*mawḍi‘*] that is specified [as being apt] for it, but not another. The use of analogy constitutes correct procedure in *all* issues, except if there are factors that preclude it; but there is no such hindering factor in the divinely ordained punishments or expiatory acts.⁵²

The Shāfi‘īs supported this view with the well-known Prophetic tradition telling the story of how the Prophet praised Mu‘ādh b. Jabal, his governor in Yemen, for using his own reasoning (*ajtahidu ra’yī*) in cases where no Qur’ānic text, Prophetic model, or consensus was available to him. The Prophet’s approval of Mu‘ādh’s use of independent reasoning, according to the Shāfi‘īs, was unconditional (*muṭlaq*). For them, this proved the general permissibility of analogy.⁵³

Another argument for the applicability of analogy in the divinely ordained punishments and the expiatory acts is given by the Shāfi‘ī Āmidī (d. 631/1233). He states that

the rule which is extended from the principal case to the novel cases necessitates a divinely ordained punishment and an expiatory act *in the sense that this is obligatory* [*min ḥaythu huwa wujūb*]. This is something that can be known.⁵⁴

Āmidī appears to grant that the numerical value of a certain norm in the *muqaddarāt* (for example, the number of lashes in the divinely ordained punishments) is something the purpose of which does indeed elude human reason. Therefore, if the norm is extended to a novel case, this numerical value must not be changed. However, what *can* be known is that a divinely ordained punishment or an expiatory act is in fact what the law stipulates for the novel case. Similarly, against the Ḥanafīs’ view that the common good, or greater purpose (*maṣlaḥa*), of the divinely ordained punishments cannot be comprehended with the help of analogical reasoning (*al-qiyās la yahtadī ilayhī*), Sam‘ānī states that

analogy can help to comprehend everything for which an efficient purpose can be discovered [*kullu mā yumkinu istikhrāj ma‘nan mu‘aththir minhu*]. The issue at hand [that of the divinely ordained punishments] belongs to this category, for the problematic is conceived in another object that is similar [*al-mas‘ala muṣawwara fī mithli hādihā*

⁵⁰ Sam‘ānī, *Qawāṭir al-adilla*, IV, 92.

⁵¹ *Ibid.*, IV, 94; Shīrāzī, *Luma‘* (tr. Chaumont), 46.

⁵² Sam‘ānī, *Qawāṭir al-adilla*, IV, 94.

⁵³ Āmidī, *Iḥkām*, IV, 64.

⁵⁴ *Ibid.*, IV, 66.

l-mawdīʿ]. For example, a purpose is deduced from “fornication” with regard to the obligation to punish with a divinely ordained punishment [*yustakhrāj maʿnan min al-zinā fi ijābi l-ḥadd*], and then “sodomy” is analogized to it.⁵⁵

Like Ghazālī before him,⁵⁶ Samʿānī grants that the exact nature of the common good (*maṣlaḥa*) residing in the divinely ordained punishments may not be known. However, this does not preclude that the common good can be produced by way of analogical transfer to novel cases. In other words, the Shāfiʿis argued that not only are the *muqaddarāt* no different from other realms of the law, but also that the exact element in the *muqaddarāt* whose “purpose [*maʿnā*]” is undecipherable is not subject to the process of analogical reasoning, and therefore does not constitute a hindering factor.

Despite these refutations of the Ḥanafīs’ claim to special treatment for the *muqaddarāt*, the Shāfiʿis could not escape the fact that all analogical reasoning could aspire to produce only probable knowledge, not certainty. With regard to the divinely ordained punishments, this posed a very specific dilemma. As the Ḥanafīs did not fail to point out, there is a Prophetic tradition commanding the believer to “avert the divinely ordained punishments on the strength of doubts [*idraʿū l-ḥudūd bi-l-shubahāt*].”⁵⁷ The tradition can be understood to mean that analogical reasoning in the divinely ordained punishments would be permissible only if it could be said to render certainty, that is, knowledge beyond doubt (*ʿilm yaqīnī*). Probabilistic reasoning, however, always carries the possibility of error, and therefore doubt (*shubhat al-aṣl*).⁵⁸ Doubt remains, as it were, one of the essential characteristics of independent legal reasoning (*ijtihād*).⁵⁹

⁵⁵ Samʿānī, *Qawāʿiṣ al-adilla*, IV, 95. ⁵⁶ See Laoust, *La politique de Ghazālī*, 177.

⁵⁷ According to Tanūkhī, *Nishwār al-muḥāḍara* (tr. Margoliouth), 136–7, caliph Harūn al-Rashīd (r. 170/786–193/809) had witnessed one of his sons committing an act of adultery, but was dissuaded from punishing him by the Ḥanafī Abū Yūsuf on the basis of the *idraʿū l-ḥudūd* tradition – much to the caliph’s relief, who proceeded to make Abū Yūsuf chief judge. For further references to the tradition in the *uṣūl al-fiqh* literature, see Sarakhsī, *Uṣūl*, I, 147; Pazdawī, *Uṣūl al-fiqh*, I, 181; Shīrāzī, *al-Tabṣira fi uṣūl al-fiqh* (Damascus: Dār al-Fikr, 1980), I, 485; Ghazālī, *Maḥṣūl*, V, 475; Āmidī, *Iḥkām*, IV, 65; Taqī al-Dīn ʿAlī b. ʿAbd al-Kāfi al-Subkī, *al-Ibhāj* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1404/[1984]), III, 233, 236. The *ḥadīth* is repeated throughout *furūʿ* works of both Ḥanafīs and Shāfiʿis. See Sarakhsī, *Mabsūṭ*, IV, 18, IX, 38, 52, XXIV, 11; Kāsānī, *Badāʾir*, III, 248, VII, 34, 233; Marghinānī, *Hidāya*, II, 100; Muḥammad b. ʿAlī al-Ḥaṣkafī, *al-Durr al-mukhtār* (Beirut: Dār al-Fikr, 1415/1994–5), IV, 18. For the Shāfiʿis, see Abū ʿAbd Allāh Muḥammad b. Idrīs al-Muzanī, *al-Mukhtaṣar* (Beirut: Dār al-Maʿrifā, 1393/1973), I, 311; Shīrāzī, *Muḥadhdhab*, II, 276, 281; Ghazālī, *al-Wasīʿ fi l-madhdhab* (Cairo: Dār al-Salām, 1417/1997), VI, 443. However, outside *fiqh* literature, the *ḥadīth* seems not very well attested. It entered only one of the six standard collections (Ibn Māja, *Sunan*, II, 850) and is otherwise mentioned only rarely (including by the *mawdūʿāt* collections). See, for example, Bayhaqī, *al-Sunan al-kubrā*, VII, 359, VIII, 238; al-Khaṭīb al-Baghādāī, *Tārīkh Baghdād*, IX, 303. Ibn Abī Shayba, *Muṣannaf*, V, 511, reports the principle of “averting the *ḥudūd* on the strength of doubts” on the authority of ʿUmar b. al-Khaṭṭāb whom he quotes as saying: “I prefer to annul *ḥudūd* on the strength of doubts, rather than to implement them.” See also Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, XI, 192, explaining the Māʿiz story with the formula, without, however, attributing it to the Prophet. For Māʿiz, see Peters, *Crime and Punishment*, 55.

⁵⁸ *EI2*, s.v. *Ḳiyās*, V, 238a–242a (M. Bernard). ⁵⁹ Weiss, *The Spirit of Islamic Law*, 111.

The Ḥanafīs appear to have argued along these lines. In general, they accepted that a jurist may judge in accordance to what is apparent (*ẓāhir*) to him, even if he does not reach the truth in the matter in absolute terms.⁶⁰ However, they restricted such kinds of conjectural thinking to the “rights of men [*ḥuqūq al-‘ibād*],” exempting the “rights of God [*ḥuqūq Allāh*].”⁶¹ Under the latter fall the divinely ordained punishments. As Sam‘ānī relates, the Ḥanafīs rejected analogy in the divinely ordained punishments

because there is doubt in analogy, for it [analogy] is the assimilation [*ilhāq*] of a novel case to the more similar of two [or more] principal cases. Thus, there remains the other principal case, as an instance of doubt [*shubhatan*]. However, the divinely ordained punishments are inoperative [*tasquṭu*] on the strength of doubts, and it is not permissible to declare them obligatory on the basis of a proof that is not devoid of doubt.⁶²

How did the Shāfi‘īs respond to this challenge? Obviously, they could not, and in fact did not, claim that analogical reason could produce certainty. Instead, it seems, they preferred to avoid the notion of “doubt” altogether, focusing instead on the principle of “overwhelming probability [*ghalabat al-ẓann*].” Probability, Āmidī insists, justifies the use of analogical reasoning in *all* the realms of the law. Āmidī repeatedly refers to the Prophetic tradition that “we make judgments on the basis of what is apparent, and God takes charge of the hidden things.”⁶³ Thus, the law, as Bernard Weiss pointedly summarizes Āmidī’s position, “is whatever the mujtahid sincerely believes to be the law.”⁶⁴ This principle warrants the famous notion that “every jurist who makes an independent effort of reasoning is correct [*kullu mujtahid muṣīb*].”⁶⁵ Under such conditions, it is as if it makes no sense to speak of doubt or error at all. As Āmidī states,

we do not acknowledge that there is a possibility of error in analogy. This is on the basis of our principle that every jurist who makes an independent effort of reasoning is correct. Even if we were to grant the possibility of error in it [analogy] we do not acknowledge this to constitute doubt, because there is overwhelming probability.⁶⁶

Besides, as the Shāfi‘īs point out, there are other sources of the law which are widely accepted as normative even though they do not achieve the status of

⁶⁰ Sarakhsī, *Uṣūl*, II, 128. ⁶¹ *Ibid.*, II, 123; Pazdawī, *Uṣūl*, IV, 1643–4.

⁶² Sam‘ānī, *Qawāṭi‘ al-adilla*, IV, 93.

⁶³ Āmidī, *Iḥkām*, IV, 65. This is Āmidī’s prime argument defending the use of analogy, and of independent legal effort (*ijtihād*) in general. See Weiss, *Search for God’s Law*, 684, 741.

⁶⁴ *Ibid.*, 560.

⁶⁵ Abū ‘Abd Allah Muḥammad b. Idrīs al-Shāfi‘ī, *al-Risāla* (Cairo: al-Bābī al-Ḥalabī, 1358/1940), §1330; Ghazālī, *Mustasfā*, II, 56, 72. See Johansen, “Torture et vérité”; Johansen, “Signs as Evidence”; Johansen, “Wahrheit und Geltungsanspruch: zur Begründung und Begrenzung der Autorität des Qadi-Urteils im islamischen Recht,” in Centro Italiano di Studi sull’Alto Medioevo (ed.), *La giustizia nell’alto Medioevo, secoli IX–XI: 11–17 aprile 1996* (Spoleto: Centro Italiano di Studi sull’Alto Medioevo, 1997), 975–1065, for the position of the Ḥanafīs on this matter.

⁶⁶ Āmidī, *Iḥkām*, IV, 66.

absolute certainty: even single-strand traditions (*akhbār al-wāḥid, āḥād*), which render even less probability than analogical reasoning, are commonly accepted as proofs in the law.⁶⁷

In conclusion, the Shāfi'īs argued that the element of uncertainty in probabilistic reasoning did *not* in fact constitute enough doubt for the Prophetic tradition of “avert the divinely ordained punishment on the strength of doubt” to become operative. The issue, as noted above, was to what extent probability should be allowed into the law. The problem illustrates the limits of an epistemological system based on probability but aiming to approach the ideal law of God. The Ḥanafīs, in the absence of certainty, preferred to exempt certain realms of the law from probabilistic reasoning, especially those whose causal structure seemed to lie uniquely with God. The Shāfi'īs, on the other hand, showed a greater readiness to accept uncertainty as the *conditio sine qua non* of all legal reasoning.

Terminological differences between Ḥanafite and Shāfi'ite qiyās

Sam'ānī, Ghazālī, Āmidī, and the other Shāfi'īs did not stop there with their criticism of the Ḥanafīs' rejection of analogical reasoning in the *muqaddarāt*. Their agenda was not merely to invite the Ḥanafīs, in the spirit of amicable debate, to overcome their doubts by accepting the principle of overwhelming probability (*ghalabat al-zamm*) even when the object of analogical reasoning was a divinely ordained punishment. Instead, the Shāfi'īs' argument was an outright polemic. Abū Ḥanīfa, says Ghazālī, “corrupted analogical reasoning [*afḥasha al-qiyās*] by declaring the divinely ordained punishments [on the basis of *qiyās*] inapplicable in theft,” thereby “destroying the very foundation of Islamic normativity [*abṭala qā'idat al-shar'*].”⁶⁸

It appears, however, that this hostile stance cannot be explained simply as polemics. Both Sam'ānī and Ghazālī bluntly state that Abū Ḥanīfa and his followers contradicted themselves. According to them, Abū Ḥanīfa *did* in fact call for divinely ordained punishments based on analogy. Ghazālī relates that Abū Ḥanīfa judged that the punishment for theft, that is, amputation of the hand, was applicable in the following circumstances: if two witnesses testified that a person had stolen a cow, and if one of them affirmed that the cow was white, the other that the cow was black, the suspect was to be punished with amputation, because there was the possibility that the cow was checkered.⁶⁹ Ghazālī fails to explain why this is an instance of “corruption of analogical reasoning,” but the imputation of a contradiction is nevertheless clear. Sam'ānī related from Shāfi'ī that he accused the Ḥanafīs of practicing analogy in the divinely ordained

⁶⁷ Sam'ānī, *Qawāṭi' al-adilla*, IV, 95; Rāzī, *Maḥṣūl*, V, 353; Āmidī, *Iḥkām*, IV, 66.

⁶⁸ Ghazālī, *Mankhūl*, 489. ⁶⁹ *Ibid.*, 490.

punishments, expiatory acts, and dispensations.⁷⁰ Other Shāfi'īs also declared this to be the case,⁷¹ as did Ibn Ḥazm.⁷²

One cannot but be baffled by such imputations. How could the Shāfi'īs and others claim that the Ḥanafīs exercised analogical reasoning in the divinely ordained punishments, even though the Ḥanafite Sarakhsī made it abundantly clear that “*ḥadd* cannot be established through analogy [*al-ḥadd bi-l-qiyās lā yathbut*],”⁷³ all the while Kāsānī judged that “there is no room for independent reasoning in *ḥadd*, it is known solely through reliance [on the Qur'ān, *sunna*, and consensus] [*al-ḥadd lā yu'rafu illā bi-l-tawqīf*]”?⁷⁴ Were the Ḥanafīs not faithful to their own methodological principles?

In order to approach an answer to this vexing question, let us look at another instance in which, according to the Shāfi'īs, the Ḥanafīs exercised analogy in the divinely ordained punishments: the “case of the witnesses of the rooms [*mas'alat shuhūd al-zawāyā*].” Ghazālī relates the following from Abū Ḥanīfa:

He said: “If four people in four different rooms [*zawāyā*] testify against someone having committed fornication, and each of the four witnessed it in a [different] room, he must be punished with *ḥadd*.” He explained: “Perhaps he was engaged with one and the same adulteress in the [four] rooms.”⁷⁵

Both Ghazālī and Rāzī claim that Abū Ḥanīfa's argument in this case relies on analogical reasoning.⁷⁶ Both strictly reject Abū Ḥanīfa's position. Even if it could be proven that all testimonies referred to the same time frame, says Ghazālī, and if continuity of the act of fornication from rooms one to four were indeed thinkable, there would be no *ḥadd*, for the non-identity of the four acts “is more probable in practice than to imagine that she [the adulteress] could have been dragged, during one act of fornication, through the rooms of the house.”⁷⁷

Ghazālī adds a rather cryptic formula to his argument. He states that “if what is clear is not tangible, [to speculate about] the intention [of the norm] is futile, whether it coexists with it or whether it precedes it [*al-jalī l-ladhī la yumassu, al-maqṣūd bātīl ma'ahu aw muqaddam 'alayhi*].”⁷⁸ I understand this statement to refer, in highly technical parlance, to the so-called *qiyās jalī* (“clear, plain analogy”). This, according to the Shāfi'ite Māwardī (d. 450/1055), is a perspicuous type of analogy in which the original case (*aṣl*) comes close to *directly implying* a ruling for another case, but in which the novel case is still different enough to require an inferential line of

⁷⁰ Sam'ānī, *Qawāṭir al-adilla*, IV, 90–1.

⁷¹ Ghazālī, *Mankhūl*, 489–90; Sam'ānī, *Qawāṭir al-adilla*, IV, 91; Rāzī, *Maḥṣūl*, V, 350–1.

⁷² Ibn Ḥazm, *Iḥkām*, VII, 369. ⁷³ Sarakhsī, *Mabsūt*, IX, 78. ⁷⁴ Kāsānī, *Badā'ir*, VII, 34.

⁷⁵ Ghazālī, *Mankhūl*, 479. The Ḥanafīs share this position with the Ḥanbalīs, whereas Shāfi'īs and Mālikīs refuse to acknowledge testimony in such circumstances. See 'Abd al-Raḥmān al-Jazīrī, *al-Fiqh 'alā l-madhāhib al-arba'a* (Beirut: Dār al-Fikr, 1422/2002), V, 55.

⁷⁶ Ghazālī, *Mankhūl*, 489, 586, 615; Rāzī, *Maḥṣūl*, 350.

⁷⁷ Ghazālī, *Mankhūl*, 480. ⁷⁸ *Ibid.*, 479.

reasoning.⁷⁹ What Ghazālī seems to be saying, then, is this: in the debate about the “witnesses of the room,” we are dealing with two scenarios. Scenario A is that of an act of adultery witnessed by four witnesses at the same time and in the same place (the original case). Scenario B is that of the “witnesses of the rooms” (the novel case). If the relationship between scenario A and scenario B were of the *qiyās jalī* type, it would be reasonable to assume that the goal (*maqṣūd*) of the *ḥadd* punishment for adultery, namely, to protect the principle of filiation against confusion of pedigree, is also realized by applying *ḥadd* in scenario B.⁸⁰ However, if one compares scenario A with scenario B one realizes that B is not close enough in kind to A to appear as “perspicuously” analogous to A. Therefore, it is futile to speculate whether the goal of preserving filiation is actually realized by applying the *qiyās jalī*. It appears, then, that Ghazālī imputes Abū Ḥanīfa and the Ḥanafīs in general with applying “clear analogy [*qiyās jalī*]” where this is inappropriate, as in the case of the “witnesses of the rooms” or in that of the checkered cow.

But, again, there is no reason to doubt the Ḥanafīs’ honesty in rejecting analogy in the divinely ordained punishments. How can one solve this dilemma? What I would like to suggest here is that the problem is terminological. In fact, the Ḥanafīs did not regard these cases as cases of analogy (*qiyās*) at all. Instead of discussing the occasioning factor and the goal of the original and the novel case, the Ḥanafīs thought of an altogether different type of legal reasoning. Therefore they refused to call this type of reasoning *qiyās*, whereas the Shāfi‘īs insisted on doing so.

Sunnī theorists often proposed that many legal norms (*aḥkām*) were deducible in purely linguistic ways.⁸¹ Rulings were to be based simply on the revealed text (*naṣṣ*), for example by implication. Sarakhsī, the Ḥanafīte jurist, spoke of *dalālat al-naṣṣ*, “that which is understood from the language of the texts without rational inference.”⁸² The implied content of the revealed text was called *mafhūm al-khiṭāb*.⁸³ In Western parlance, arguments in which a meaning is implied are usually called *a fortiori* arguments. They are distinct from analogical (as well as syllogistic) arguments precisely in their lack of an inferential line of reasoning, or in the lack of transposition of a meaning from one case to a case that is altogether different. Rather, in *a fortiori* arguments, the new case is *encompassed* by the original case. The boundary between *a fortiori* and analogy, however, is hard to pin down,

⁷⁹ Māwardī, *Adab*, I, 588, 1413, cited in Wael Hallaq, “Non-Analogical Arguments in Sunnī Juridical *Qiyās*,” *Arabica* 36 (1989), 292. See also Shirāzī, *Lumaʿ* (tr. Chaumont), 131, 263–4.

⁸⁰ On Ghazālī’s use of the term *maqṣūd*, see Brunschvig, “Valeur et fondement du raisonnement juridique d’après al-Gazālī,” *SI* 34 (1971), 69.

⁸¹ See, for example, Sarakhsī, *Uṣūl*, II, 123.

⁸² Sarakhsī, *Uṣūl* (ed. Afghānī), I, 241, 243–237, cited in Hallaq, “Non-Analogical Arguments in Sunnī Juridical *Qiyās*,” 290 n. 13. Cf. *ibid.*, 291 n. 17, for the other names of the same category.

⁸³ Shirāzī, *Lumaʿ* (tr. Chaumont), 131, further specifies that *a fortiori* implication is called *fahwā al-khiṭāb*.

for it can often be difficult to tell whether inference has actually taken place or not.⁸⁴

For most medieval Muslim jurists, *qiyās* included *a fortiori* ways of reasoning. For a long time this was not recognized by Western students of Islamic law. Schacht had commented on the difference between analogy and *a fortiori* in *qiyās*,⁸⁵ but it is Hallaq's merit to have analyzed the place of non-analogical arguments in *qiyās* in a more exhaustive fashion.⁸⁶ Hallaq argues that Muslim legal theorists had difficulties distinguishing the two types of reasoning because they did not conceive of *qiyās* as being analyzable in logical terms; instead, their pragmatic agenda was to investigate only "the degree to which the *ratio legis* makes itself manifest in the original texts, and its applicability, or lack thereof, to the new case at hand."⁸⁷ According to Hallaq, for the jurists to analyze "*qiyās* as an analogical, asyllogistic [that is, *a fortiori*] or syllogistic structure was . . . largely an irrelevant issue."⁸⁸ Most Shāfi'īs, for example Shīrāzī (d. 476/1083) and Ghazālī, argued that *a fortiori* conclusions always involve an inferential line of reasoning, if only because the text of the original case does not mention the assimilated case.⁸⁹ For them, *a fortiori* arguments counted as *qiyās*.⁹⁰ But this view was typical not only of the Shāfi'īs. The Zāhiri Ibn Ḥazm, for example, described *a fortiori* simply as a form of *qiyās*.⁹¹ The Ḥanbalī Ibn 'Aqīl was perhaps a little more aware of the

⁸⁴ Hallaq, "Non-Analogical Arguments in Sunnī Juridical *Qiyās*," 300: "It must be immediately stated here that the *a fortiori* argument has mystified the traditional logicians as much as it has eluded the modern ones." Cf. Ulrich Klug, *Juristische Logik* (4th rev. ed., Berlin: Springer, 1982), 147.

⁸⁵ Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon, 1950), 99, 110, 124–5.

⁸⁶ Hallaq, "Non-Analogical Arguments in Sunnī Juridical *Qiyās*"; Hallaq, *The Origins and Evolution of Islamic Law*, 115, 142–3.

⁸⁷ Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997), 93.

⁸⁸ *Ibid.*

⁸⁹ Shīrāzī, *Lum'a* (tr. Chaumont), 131; Hallaq, "Non-Analogical Arguments in Sunnī Juridical *Qiyās*," 292. Ghazālī treats *a fortiori* arguments (which he thinks are inferential) under the headings of *taḥqīq al-'illa* and *tanqīḥ al-'illa*. See his *Mustasfā* (ed. Shāfi), I, 282. Brunschvig, "Raisonnement par analogie d'après al-Gazālī," 64, states that "Ghazālī accepted that the generalization of a textually individual or specific case is a form of *qiyās*; judging from the definitions and examples, it is this that receives the designation *tanqīḥ manāḥ al-ḥukm* in the *Mustasfa*."

⁹⁰ However, the Shāfi'ite Āmidī placed *a fortiori* meanings under the heading of implication. See Weiss, *Search for God's Law*, 490. The Shāfi'ite Aḥmad b. Aḥmad Ibn Barhān, *al-Wuṣūl ilā l-uṣūl* (Riyadh: Maktabat al-Ma'ārif, 1983–4), II, 55, also held this view. See Shīrāzī, *Lum'a* (tr. Chaumont), 162 n. 464.

⁹¹ Ibn Ḥazm, *Iḥkām*, VII, 369. Ibn Ḥazm, as is well known, rejected *qiyās* altogether. His opponents, Ibn Ḥazm relates in his *K. al-Iḥkām*, divide *qiyās* into three parts, or types. Two of the three types of *qiyās* that Ibn Ḥazm reproduces seem to come close to *a fortiori* lines of reasoning, namely, those two types which in Western logics are called *a minore ad maius* and *a maiore ad minus*. The former Ibn Ḥazm calls "the type of greater resemblance and importance [*qism al-ashbah wa-l-awlā*]," while the latter is "the type of lesser importance [*qism al-adnā*]." Ibn Ḥazm claims that Abū Ḥanīfa used these two types of reasoning in norms concerning penitentiary actions and *ḥadd* punishments. He sees no contradiction with his own statement

problem. He seems to hesitate whether to classify *a fortiori* lines of reasoning (*fahwā l-khiṭāb* in his terminology) under the category of “that which is known through rational inspection (*ma’qūl*)” or under the category of non-inferential implication, that is, “direct enunciation [*nūṭq*].”⁹² But, like Ibn Ḥazm, he does not offer a “logical” analysis of *a fortiori*.

The Ḥanafis differed from the other schools in their view of *a fortiori*. They used *a fortiori* arguments in the divinely ordained punishments but refused to use *qiyās* terminology for them. Instead, they preferred to speak of other forms of argumentation, for example *istiḥsān* (“juristic preference”).⁹³ While in practice “*istiḥsān* was little more than another form of *qiyās*,”⁹⁴ the Ḥanafīs insisted on the difference. Thus, Ibn al-Humām, a later Ḥanafī authority, said that the *ḥadd* punishment for fornicators in the case of the “witnesses of the rooms” was based on *istiḥsān*, not *qiyās*.⁹⁵ The reason why the Shāfi‘īs could impute contradictions to the Ḥanafīs in their treatment of the divinely ordained punishments is that the Ḥanafis differed in their understanding of the content of the term *qiyās*.⁹⁶

At the beginning of this discussion I raised the question of whether the Ḥanafīs’ rejection of analogical reasoning in the divinely ordained punishments could have helped to restrict the administration of punishment, thereby protecting the individual from all-too-extensive uses of the repressive authority of the ruling classes. At first sight, the *la qiyāsa fī l-ḥudūd* doctrine seems to define the scope of criminal law more narrowly. However, this is not necessarily so. After all, the Shāfi‘īs accused the Ḥanafis of calling for divinely ordained punishments even when punishment was not called for at all. One must test the hypothesis that the Ḥanafis made up for their rejection of analogical reasoning by a more extensive use of *a fortiori* reasoning.

in one of the preceding paragraphs, that Abū Ḥanīfa rejected *qiyās* in penitentiary actions and divinely ordained punishments. It appears that Ibn Ḥazm did not realize that Abū Ḥanīfa and his followers did not consider *a fortiori* arguments to constitute *qiyās*.

⁹² Abū l-Wafā’ ‘Alī Ibn ‘Aqīl, *al-Waḍiḥ fī uṣūl al-fiqh* (Beirut: Franz Steiner, 1996), I, 17.

⁹³ This is recognized by Ghazālī, *Mankhūl*, 479, who says that Abū Ḥanīfa called his judgment about the *shuhūd al-zawāya* by the name of *istiḥsān*. However, Ghazālī insists that what Abū Ḥanīfa is really doing is analogy: “He opposed analogy but we have taught that he constructed it [analogy] on false *istiḥsān* [*wa-in khālafa l-qiyās la-‘allamnā bi-annahu banāhu ‘alā l-istiḥsān al-fāsid*]” (*ibid.*, 586).

⁹⁴ Hallaq, *The Origins and Evolution of Islamic Law*, 144. On the Ḥanafī preference for *istiḥsān* over *qiyās* in *ḥadd* punishments, see Robert Gleave, “Crimes Against God and Violent Punishments in *al-Fatāwā al-‘Ālamgīriyya*,” in John R. Hinnells and Richard King (eds.), *Religion and Violence in South Asia: Theory and Practice* (London: Routledge, 2007), 85.

⁹⁵ Ibn al-Humām, *Faṭḥ al-qadīr*, V, 286. Ghazālī had an inkling of this. He related that the Ḥanafīs claimed that what they were doing was “careful inspection [*tanqīḥ*] of the anchoring of the norm, not inference [*istīnbāʿ*] of the anchoring of the norm”: *Mustasfā*, 331. Sam‘ānī, *Qawāṭif al-adilla*, IV, 90, also grants that the Ḥanafīs regard *ḥadd* in the case of the “witnesses of the room” as being based on *istiḥsān*, not *qiyās*.

⁹⁶ Ghazālī himself suggested that the difference between himself and the Hanafites in matters of *qiyās* was perhaps only a question of terminology. See his *Mustasfā* (ed. Cairo), II, 74.

What, then, for the Ḥanafīs were the limits of *a fortiori* reasoning? I propose to examine this issue in the context of a legal dispute that has been mentioned a number of times already: the punishment for sodomy.

Sodomy (*liwāṭ*) vs. fornication (*zinā*) in Ḥanafī substantive law (*furūʿ*)

The following discussion seeks to demonstrate how the Ḥanafī rejection of analogy in the divinely ordained penalties in legal theory played out on the level of substantive law (*furūʿ*), and whether their espousal of *a fortiori* lines of reasoning led them to results that differed significantly from those of the other schools. In order to exemplify this mechanism, I propose to analyze the relationship between fornication (*zinā*) and sodomy (*liwāṭ*), as it is discussed in Ḥanafī *furūʿ* literature. The choice of sodomy as the focus of this section is primarily a function of the fact that Ḥanafī authors, both in legal theory and substantive law handbooks, devote considerable attention to this topic. Arguably, sodomy is one of the prime examples that the Ḥanafī authors use to assess the limits of the divinely ordained punishments. It should be noted that the historical sources tell us little about the extent to which legal theory influenced actual punitive practice.⁹⁷ However, perhaps one ought to look beyond one-to-one transfers from theory to practice. The opinions of the jurists carried weight not only in the realm of the strictly legal; they are also likely to have influenced moral inclinations on a broader basis. In the popular imagination, sodomites were subjected to an array of humiliating punishments in the hereafter. It is not unthinkable that a certain lenience of the jurists vis-à-vis sodomy – especially among the Ḥanafīs of the period – could soften such harsh condemnations in the eyes of the population at large.

Sodomy concerned and continues to concern enough people in the Islamic world (and beyond) to warrant investigation. While studies of the classical jurisprudence dealing with the topic are rare,⁹⁸ there is a widespread notion that Islamic legal culture is homophobic. It may well be worth the effort, then, to examine this idea. I will not fall into the trap of suggesting that the traditional interpretations of Islamic law by the jurists are in any way compatible with modern Western sensibilities toward issues such as sodomy, or human rights in general. My move is not apologetic. I am not engaged in reversing stereotypes and claiming the opposite, which would be tantamount to creating just as much of a stereotype. Generally speaking, what I am trying to

⁹⁷ There is, of course, the argument *e silentio*. No stonings of sodomites are mentioned in Saljūq chronicles. Thus, it would appear as if the Ḥanafī school, which most Saljūq rulers favored, achieved a certain impunity for sodomites from the divinely ordained punishment stipulated for fornication. Unfortunately, this argument is invalidated by the fact that the chronicles do not mention punishments of fornicators either.

⁹⁸ The most comprehensive study to date is Schmitt, “*Liwāṭ* im *Fiqh*.” See also el-Rouayheb, *Before Homosexuality*, 118–28. Most other studies of homosexuality in Islam, like the entry on “*Liwāṭ*” in the *Encyclopaedia of Islam*, V, 776b–779b (C. Pellat and eds.), tend to focus on the extralegal, i.e., cultural or literary, history of the phenomenon.

accomplish is to understand how the jurists' view on legal punishment contributed to broader notions of justice and the place of the individual vis-à-vis both God and society. More specifically, I would like to explore how classical Islamic criminal law delineates the private realm from the public and thereby helps to safeguard the individual from arbitrary uses of punitive power. It seems to me that, in order to achieve this goal, the jurists did not hesitate to push the limits of the Islamic normative system. In later stages of development, it sometimes happened that the arguments of the classical jurists were relegated outside the “dogmatic enclosure [*clôture dogmatique*]” – to borrow a term from Mohammed Arkoun – that is, outside what has become, nowadays, “thinkable [*pensable*]” to be truly Islamic. Through rescuing those strands of thought, perhaps it can be shown that the classical jurists' views are still relevant in the crucial task of assessing some of the creative potential, and the limits, of *shar'ī* authority.

Within the Ḥanafī school of law, the opinion that sodomy was to be punished in the same way as fornication came to be associated with the names of the third-/ninth-century authorities Abū Yūsuf and Muḥammad al-Shaybānī. On the other hand, the opinion that sodomy was *not* to be punished like fornication was attributed to their teacher Abū Ḥanīfa.⁹⁹ The problem with such attributions is that the earliest sources give only rudimentary accounts of Abū Ḥanīfa's, Abū Yūsuf's, and Shaybānī's respective positions.¹⁰⁰ Classical and later Ḥanafī authors attribute a plethora of arguments to them, but one should keep in mind that one cannot know for sure whether these are indeed their original teachings. It appears more likely that Abū Ḥanīfa as well as Abū Yūsuf and Shaybānī came to function as name tags for currents of thought within the Ḥanafī school. Points in support for either of the two lines of thinking accumulated over time through a mechanism regarded as “deduction [*takhrīj*]” from the founding fathers' opinions,¹⁰¹ but which could broaden and in fact change the law.¹⁰²

⁹⁹ For references in *fatāwā* works, see Sughdī, *Fatāwā*, II, 640; al-Ḥasan b. Manzūr al-Ūzjandī al-Farghānī Qaḍīkhān, *Fatāwā* (Beirut: Dār al-Ma'rifa, 1973), III, 480; Shaykh Niẓām et al., *al-Fatāwā al-'alamgīriyya*, II, 150. For references in *furū'* works, see Sarakhṣī, *Mabsūt*, IX, 77; Kāsānī, *Badā'ī'*, VII, 34; Marghinānī, *Hidāya*, II, 102; Zayla'ī, *Tabayn al-ḥaqā'iq*, III, 180; Ibn al-Humām, *Fath al-qadīr*, V, 263; Akmal al-Dīn Muḥammad b. Maḥmūd al-Bābartī, *al-'Ināya sharḥ al-hidāya* (Beirut: Dār al-Fikr, n.d.), V, 262–3; Ibrāhīm b. Abī l-Yaman Muḥammad Ibn al-Shihna, *Lisān al-ḥukkām* (Cairo: al-Bābī al-Ḥalabī, 1393/1973), I, 398; Ibn Nuḡaym, *Bahr*, V, 17; Ḥaskafī, *Durr*, IV, 190–3. See also Muḥammad b. 'Alī b. Muḥammad al-Shawkānī, *Nayl al-awṭār* (Beirut: Dār al-Jil, 1973), VII, 287–8; Jazīrī, *al-Fiqh 'alā l-madhāhib al-arba'a*, V, 103–6. The subsequent discussion relies primarily on the sources cited in this footnote.

¹⁰⁰ See Shaybānī, *al-Jāmi' al-ṣaghīr*, I, 282.

¹⁰¹ Sarakhṣī, *Mabsūt*, III, 218: *fa-ammā l-takhrīju qawli Abī Ḥanīfa anna* etc. Cf. *ibid.*, VI, 129; Kāsānī, *Badā'ī'*, I, 272; Ibn 'Abīdīn, *Hāshiya*, I, 464 (contrasting the *takhrīj* of al-Jurjānī with that of al-Karkhī).

¹⁰² See Hallaq, “*Takhrīj* and the Construction of Juristic Authority,” in Bernard Weiss (ed.), *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), 317–35, esp. 335 n. 69. Cf. Hallaq, “Was the Gate of Ijtihad Closed?,” *IJMES* 16 (1984), 3–41; Hallaq, *The Origins and Evolution of Islamic Law*, 159–63.

Further complicating the picture is the fact that it is difficult to decide which of the two currents of thought was victorious at the end of the day, or even to which individual authors adhered. The debate remained basically unsettled. None of the great systematizers of Ḥanafī law (take Sarakhsī, Kāsānī, or Ibn al-Humām as examples) explicitly opts for one solution over the other.¹⁰³ Neither do the *fatāwā* collections give any clear directives as to what the correct answer to the problem is.¹⁰⁴ Rather, one is presented with a multiplicity of opinions, as if encouraged to find one's own solution to the problem.

Thus, one must distinguish between (1) the teaching of those who followed the lead of Abū Yūsuf and Shaybānī and (2) the teaching of those who embraced Abū Ḥanīfa's original position. To avoid the awkward situation of talking about the "followers of Abū Ḥanīfa among the Ḥanafīs," I would like to propose a different taxonomy. In the following, I shall call those who argued, following Abū Yūsuf and Shaybānī, that sodomy required the *ḥadd* punishment for fornication the "pro-*ḥadd*" party. Those who argued, with Abū Ḥanīfa, that no *ḥadd* punishment was indicated for sodomy will be called the "anti-*ḥadd*" faction.

For reasons that have been discussed above, according to the Ḥanafī consensus, drawing an analogy from fornication to sodomy was made impossible by the *la qiyās fī l-ḥudūd* doctrine of Abū Ḥanīfa. Basically three ways remained open for the pro-*ḥadd* Ḥanafīs to condemn sodomy with the same punitive vigour as fornication. The classical authors as a rule do not present these three argumentative strategies in an overly chronological or systematic fashion. Nevertheless it appears helpful to present their discussions under the following three headings:

- (1) First, the pro-*ḥadd* Ḥanafīs could seek to ascertain certain textual proofs in the Qur'ān or in the reports about the Prophet Muḥammad and the Companions which explicitly specified a *ḥadd* punishment for sodomy;
- (2) Second, they could argue that sodomy was implied in fornication in a narrow sense, that is, lexically (*min ḥaythu l-ism, bi-l-lisān*). This involved the proof that the Arabic word for sodomy, *liwāṭ*, was contained within, or in fact congruent with, the term for fornication, *zinā*;
- (3) Third, they could claim that sodomy was *a fortiori* implied by fornication in a broader sense, that is, semantically, in terms of its general meaning or function (*min ḥaythu l-ma'nā*).

I will proceed to discuss each of these three strategies of argumentation.

¹⁰³ See Ibn al-Humām, *Fatḥ al-qadīr*, V, 263.

¹⁰⁴ Unless other clues are given. Sughdī, *Fatāwā*, II, 630, for example, speaks of the *ḥadd al-liwāṭ* in one place.

Arguments from Prophetic tradition (ḥadīth)

The first of the three approaches to sodomy in Ḥanafī *furū'* literature may seem somewhat anachronistic. After all, the Ḥanafīs refused to draw the analogy from fornication to sodomy. It would appear to make sense to discuss the applicability of *qiyās* only if proofs taken from the Qur'ān, *sunna*, or the consensus handed down by scholars are unavailable.¹⁰⁵ Now, the debate about analogy from adultery to sodomy was a commonplace in the *uṣūl al-fiqh* literature not only of the Ḥanafīs, but of all the schools of law. This suggests that it was commonly accepted that a solution to the issue taken directly from the textual tradition of early Islamic *Heilsgeschichte* was in fact *not* available. Both Sarakhṣī and Kāsānī agreed that sodomy “remains without a clearly defined punishment in the Law.”¹⁰⁶ In postclassical times, things did not change in the least. Thus, Ibn al-Humām could state that “as for a *ḥadd* punishment specified by the Law, there is no legal qualification for it [*ammā l-ḥadd al-muqaddar shar'an fa-laysa ḥukman lahu*].”¹⁰⁷ In other words, according to Ibn al-Humām, no Qur'ānic directive, Prophetic *ḥadīth*, or consensual decision (*ijmā'*) was available that could serve as basis for a legal rule (*ḥukm*) against sodomy.

This may come as a surprise, for the existence of homophobic Prophetic traditions is a well-known feature of Islamic culture. In what is the standard short introduction to the touchy topic of sodomy in Islam, one reads that “[t]he statements of the *ḥadīth* are . . . perfectly clear and particularly harsh.”¹⁰⁸ One may well wonder how this is to be reconciled with Ibn al-Humām's dictum.

The answer is rather straightforward. The view that the *ḥadīth* tradition is “clear” in its utter condemnation of sodomy needs to be nuanced, to say the least. The Ḥanafī jurists did indeed discuss the textual evidence of the *ḥadīths*, assessing the value of certain reports going back to the Prophet and his Companions. In fact, these discussions form a significant part of the material that I propose to study. The point is that the anti-*ḥadd* Ḥanafīs did not believe these *ḥadīths* to be trustworthy.¹⁰⁹ They refused to follow the simple logic of claiming that sodomy was punishable directly by virtue of revelation, by the example set by the Prophet, or by consensus of the scholars.

The Ḥanafī Kāsānī is known for his scrupulously systematic approach to the law.¹¹⁰ He passes in silence over such Prophetic traditions as “Stone the

¹⁰⁵ Cf. Hallaq, *The Origins and Evolution of Islamic Law*, 141, quoting Abū 'Alī Aḥmad b. Muḥammad al-Shāshī, *al-Uṣūl* (Beirut: Dār al-Kitāb al-'Arabī, 1402/1982), 325.

¹⁰⁶ Sarakhṣī, *Mabsūṭ*, IX, 79. Cf. Kāsānī, *Badā'ir*, VII, 34.

¹⁰⁷ Ibn al-Humām, *Faṭḥ al-qadīr*, V, 263. ¹⁰⁸ *EI2*, s.v. Liwāt, V, 776a (C. Pellat and eds.).

¹⁰⁹ This is also the conclusion reached by Léon Bercher, *Les délits et les peines du droit commun prévu par le Coran* (Tunis: Société Anonyme de l'Imprimerie Rapide, 1926), 95.

¹¹⁰ According to W. Heffening and Y. Linant de Bellefonds, Kāsānī's *Badā'ir al-ṣanā'ir* is the unsurpassed masterpiece of Ḥanafī legal literature. See *EI2*, s.v. al-Kāsānī, IV, 690a.

one who is on top and the one who is below [*fa-rjamū l-a'lā wa-l-asfal!*]"¹¹¹ or "Whosoever you find engaged in doing what the people of Lūt did, kill both the active and the passive partner [*fa-qtulū l-fā'il wa-l-maf'ūl!*]"¹¹² A perusal of Muslim *ḥadīth* criticism (*al-jarḥ wa-l-ta'dīl*) shows that the first of these two traditions was considered spurious from early on.¹¹³ As for the second tradition, its most highly regarded compiler, the Khurāsānian Tirmidhī (d. 279/893), had himself voiced doubts about its reliability. In his *Sunan*, Tirmidhī quotes another saying attributed to the Prophet, "Those who do what the people of Lūt did are cursed!" Tirmidhī then points out that in this tradition "killing is not mentioned."¹¹⁴ Bukhārī and Nasā'ī also doubted the authenticity of the *uqtulū l-fā'il wa-l-maf'ūl*-tradition.¹¹⁵ All in all, as later Ḥanafī authors did not fail to point out, such traditions were not attested well enough to serve as basis for a legal judgment, or *ḥukm*.

The Shāfi'īs, on the other hand, appear to have been more inclined to accept these traditions.¹¹⁶ This fact illustrates a basic tension between the two schools: Shāfi'ism-Ash'arism stressed the importance of *ḥadīth*, while the Ḥanafīs gave greater emphasis to reason in the evolution of *fiqh*. This important point of contention contributed to the enmity between the two camps during Saljūq times.¹¹⁷ One cannot help but think that the above-quoted statement taken from the *Encyclopaedia of Islam* about the "clear" and "harsh" condemnation of sodomy in the *ḥadīth* results from a comparative neglect of the Ḥanafī literature, or from an overemphasis on Shāfi'ī works such as Nuwayrī's (d. c. 732/1332) *Nihāyat al-'arab fī funūn al-adab*.¹¹⁸ At least it does not take into account the Muslim tradition of *ḥadīth* criticism the way the anti-*ḥadd* Ḥanafīs saw it.

¹¹¹ Ibn Māja, *Sunan*, II, 856; Abū Ya'lā Aḥmad b. 'Alī al-Tamīmī al-Mawṣilī (d. 307/919), *Musnad* (Damascus: Dār al-Ma'mūn li-l-Turāth, 1404/1984), XII, 43.

¹¹² Tirmidhī, *Sunan*, IV, 57; Ibn Māja, *Sunan*, II, 856; Abū Dāwūd, *Musnad*, IV, 158; Ibn Ḥanbal, *Musnad*, I, 300; al-Ḥakīm al-Nisābūrī, *Mustadrak*, IV, 395 (*fa-rjamū l-fā'il wa-l-maf'ūl*).

¹¹³ 'Abd Allāh Ibn 'Adī al-Jurjānī, *al-Kāmil fī du'afā' al-rijāl* (3rd ed., Beirut: Dār al-Fikr, 1409/1988), V, 230; Ṭaḥāwī, *Sharḥ mushkil al-āthār*, IX, 445; 'Abd Allāh b. Yūsuf al-Zayla'ī, *Naṣb al-rāya* (Cairo: Dār al-Ḥadīth, 1357/[1937–8]), III, 340.

¹¹⁴ Tirmidhī, *Sunan* (ed. Shākir), IV, 57 (no. 1456). ¹¹⁵ Ibn al-Humām, *Fath al-qadīr*, V, 264.

¹¹⁶ Shirāzī, *Muḥadhdhab*, II, 268; Ghazālī, *Wasīṭ*, VI, 440. For a commentary on Shirāzī and a discussion of the relevant *ḥadīths*, see Nawawī, *al-Majmū' sharḥ al-Muḥadhdhab*, XX, 27–8. As for the pro-*ḥadd* Ḥanafīs, I do not know for sure whether they used these traditions to defend their standpoint. The emphasis in Ḥanafī literature seems to lie on the pro-*ḥadd* faction's argument that sodomy is implied, lexically as well as *a fortiori*, in fornication, for which see below.

¹¹⁷ Cf. *EI2*, s.v. Saljūqids, VIII, 936a (C. E. Bosworth).

¹¹⁸ Charles Pellat, author of the entry "Liwāṭ" in *EI2*, V, 776a, appears to base his view exclusively on Nuwayrī's *Nihāya* (II, 204–10). As Lois Anita Giffen, *Theory of Profane Love Among the Arabs* (New York: New York University Press, 1971), 146–7, has noted, most of chapter 3 of the first part of the second *fann* is taken *verbatim* from Ibn al-Jawzī's *Dhamm al-hawā*. Schmitt, "Liwāṭ im Fiqh," 64 n. 54, adds that with regard to the topic of *liwāṭ*, Nuwayrī takes all his material from Ibn al-Jawzī, omitting, however, the legal discussions reported by the latter.

Neither were reports from the Companions suited to serve the purpose of finding readymade answers to the problem. On the contrary, the very existence of these reports, according to the anti-*ḥadd* Ḥanafis, was proof that no divinely ordained (*muqaddar sharʿan*) punishment had existed in early Islam. In fact, the variegated ways in which the Companions had dealt with sodomites attest to a confusing situation of legal uncertainty. The first caliph, Abū Bakr, was said to have burned two sodomites.¹¹⁹ The fourth caliph ʿAlī was believed to have treated sodomites as fornicators and punished them accordingly: with lashing if they were unmarried, with stoning if they were married.¹²⁰ However, in another report he is said to have recommended that a sodomite be burned.¹²¹ Ibn ʿAbbās was reported to have held that the sodomite should be taken to the highest place in town, then thrown off head first, and finally stoned.¹²² Another Companion, the pretender to the caliphate Ibn al-Zubayr, allegedly wanted to imprison sodomites in a stinking hole, “until they die from the stench.”¹²³ Other Companions supposedly let a wall collapse on top of sodomites.¹²⁴

The pro-*ḥadd* Ḥanafis tried to resolve this embarrassing diversity of practices by arguing that the Companions had agreed that the life of the sodomites was forfeited, and that “they only disagreed as to how to make the punishment hard on them.”¹²⁵ Abū Ḥanīfa, on the other hand, and with him, it seems, the majority of Ḥanafī jurists, argued thus:

The companions have agreed that this act [sodomy] is not fornication because they knew the revealed text on fornication, and despite this, they disagreed about the necessary legal consequence for this act. One cannot conjecture that they would have used independent reasoning in the presence of a revealed text [*naṣṣ*]. It was agreed among them that this act did not constitute fornication . . . This offense remains without a clearly defined punishment in the Law.¹²⁶

Others added that such reports from the Companions were not in the least trustworthy, and that to take them as guiding principles was on the basis of personal speculation (*ʿalā l-ijtihād*).¹²⁷ *Ijtihād*, however, which could yield only contingent certainty, was inapplicable to the issue of sodomy because of the Prophetic tradition that divinely ordained punishments were to be averted on the strength of legal doubts (*idraʿū l-ḥudūd ʿinda l-shubahāt*).

¹¹⁹ Sarakhṣī, *Mabsūt*, IX, 78; Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181; Ibn al-Shiḥna, *Lisān al-ḥukkām*, I, 398.

¹²⁰ Sarakhṣī, *Mabsūt*, IX, 79; Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181.

¹²¹ Ibn al-Humām, *Fath al-qadīr*, V, 264. According to Ibn al-Humām, this goes back to Wāqidīʿs (d. 207/822) *K. al-Ridda*, “at the end of the revolt of the Banū Sulaym.”

¹²² Sarakhṣī, *Mabsūt*, IX, 79; Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181; Ibn al-Humām, *Fath al-qadīr*, V, 265.

¹²³ Sarakhṣī, *Mabsūt*, IX, 79; Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181; Ibn al-Humām, *Fath al-qadīr*, V, 265.

¹²⁴ Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181; Ibn al-Shiḥna, *Lisān al-ḥukkām*, I, 398. For a summary of the Companions’ practices, see also Marghinānī, *Hidāya*, II, 102; Ibn al-Humām, *Fath al-qadīr*, V, 264.

¹²⁵ Sarakhṣī, *Mabsūt*, IX, 79. ¹²⁶ *Ibid.* Cf. Kāsānī, *Badāʾir*, VII, 34.

¹²⁷ Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181.

To sum up, many Ḥanafī jurists regarded textual proofs from the *ḥadīths* as to how to punish sodomites as spurious. In fact, these *ḥadīths* may have been thought to be so off the point that an authority like Kāsānī could pass over them in silence not because he feared the confrontation, but because he considered the evidence not even worthy of refutation.

Lexicographical arguments

The second strategy of the pro-*ḥadd* faction to support the argument that sodomy had to be punished in the same way as fornication was to claim that in fact sodomy and fornication were lexically the same (*al-liwāṭa bi-zinā min ḥaythu l-ism*),¹²⁸ and that therefore the Qurʾānic punishment for *zinā* equally applied to *liwāṭ*. This often involved the equation of both *zinā* and *liwāṭ* with *fāḥisha* (“abominable thing”). God, in the Qurʾān, had admonished the people of Lūt because of the “abominable things [*fawāḥish*]” they had committed. If fornication, clearly also an “abominable thing,” necessitated the *ḥadd* punishment, then sodomy did too.¹²⁹

To this argument, two answers were given in the course of the intra-Ḥanafī debate. The anti-*ḥadd* faction pointed out that *all* major sins were considered “abominable things.” In spite of this fact, not all of them were punished with stoning or lashing.¹³⁰ In the Qurʾān (6:151), God simply had admonished mankind to “avoid abominable actions [*wa-lā taqrabū l-fawāḥish*].”¹³¹ The anti-*ḥadd* Ḥanafīs also argued that, lexically, *zinā* simply was not the same as *liwāṭ*, and that the two nouns referred to completely different types of behavior.¹³² After all, if they were the same, why would there be a need for two different verbs (*zanā* and *lāṭa*) to denote the same action? A verse from Arabic poetry was adduced to lend support to this point:

Min kaffi dhāti ḥirin fī zīyi dhī dhakarīn
lahā muḥibbāni lūtīyun wa-zannāʾū.

A maid dressed in men’s clothes has
two lovers: the sodomite and the fornicator.¹³³

Supposedly, if the poet could speak of “two lovers [*muḥibbān*],” then clearly he had in mind two different persons. The author of this well-known verse is the poet Abū Nuwās (d. c. 200/815).¹³⁴ It is remarkable that the classical

¹²⁸ For this formula, which is repeated elsewhere, see Sarakhsī, *Mabsūt*, IX, 77. ¹²⁹ *Ibid.*

¹³⁰ *Ibid.*, IX, 78. ¹³¹ Ibn al-Humām, *Faḥḥ al-qadīr*, V, 265. ¹³² Kāsānī, *Badāʾir*, VII, 34.

¹³³ Sarakhsī, *Mabsūt*, IX, 78; Zaylāʿī, *Tabyīn al-ḥaqāʾiq*, III, 181.

¹³⁴ Ewald Wagner, *Abū Nuwās: eine Studie zur arabischen Literatur der ‘Abbāsidenzeit* (Wiesbaden: Franz Steiner, 1965), 291–2. A slightly different version can be found in Abū Nuwās al-Ḥasan b. Hānī’ al-Ḥakamī, *Dīwān* (Wiesbaden: Franz Steiner, 1958), 184; also quoted in Abū l-‘Abbās Shams al-Dīn Aḥmad b. Muḥammad Ibn Khallikān, *Wafayāt al-aʿyān wa-anbāʾ abnāʾ al-zamān* (Beirut: Dār Ṣādir, 1398/[1977]), I, 223. The verse is translated into German by Littman, *Die Erzählungen aus Tausendundein Nächten*, III, 588. Cf. the discussion of the verse in Schmitt, “*Liwāṭ* im *Fiqh*,” 56–7.

Ḥanafī jurists found nothing wrong with quoting Abū Nuwās, even though he was infamous both for his attraction toward young boys and for his contempt for the *fuqahā*. Only Ibn al-Humām, a relatively late Ḥanafī author, refuses to acknowledge the verse. According to him, Abū Nuwās was “an arabicized Persian [*mutawallid*]; sound speech is not proven by his work, in fact the books of *sharīʿa* should be purged of the likes of him.”¹³⁵

Thus, the debate went back and forth. Another variant of the argument in favor of the lexical congruence of fornication and sodomy was to posit that “fornicator” and “sodomite” are individual names referring to the same type of person, in the same way in which the Prophet’s condemnation of the fornicator Māʿīz applies not only to the historical Māʿīz, but to all fornicators.¹³⁶ The answer from the anti-*ḥadd* camp to this point was that these two cases are hardly congruent. “Sodomite” and “fornicator,” they argued, are not just arbitrary names, or signifiers, tagged on one and the same type of offender. At root the two terms express very tangible differences of behavior. Sarakhṣī reminds his reader that “one must analyze closely the terminology used to refer to actions that necessitate the divinely ordained punishment [*lā budd min ʾi tibār ism al-fīʾl al-mūjib li-l-ḥadd*],”¹³⁷ and Kāsānī, as if to elaborate, points out that “the difference in names is an indication that there is an essential difference in meaning [*ikhṭilāf al-asāmī datil ikhṭilāf al-maʿānī fī l-aṣl*].”¹³⁸ Sarakhṣī argues that a fornicator is to a sodomite what a thief (*sāriq*) is to a pickpocket (*mukhtalis*) or assailant (*muntahib*). The latter two cannot be considered thieves, because their actions are different from ordinary theft (*sariqa*) to the degree of necessitating a different legal norm (*ḥukm*).¹³⁹

The pro-*ḥadd* Ḥanafīs also quoted a tradition from the Prophet that stated that “[i]f a man penetrates another man both are fornicators [*idhā atā l-rajulu al-rajula fa-humā zāniyān*].”¹⁴⁰ This was a potential point of embarrassment to the anti-*ḥadd* party. Besides criticizing the authenticity of the tradition,¹⁴¹ they argued that it had to be understood figuratively (*maḥāzan*), because “the true sense of speech is not established by it [*lā tathbutu ḥaqīqat al-luḡa bihī*].”¹⁴²

¹³⁵ Ibn al-Humām, *Faḥ al-qadīr*, V, 264.

¹³⁶ Sarakhṣī, *Mabsūṭ*, IX, 78. For the tradition about Māʿīz, see Muslim, *Saḥīḥ*, V, 119.

¹³⁷ Sarakhṣī, *Mabsūṭ*, IX, 78. ¹³⁸ Kāsānī, *Badāʾiʿ*, VII, 34.

¹³⁹ Sarakhṣī, *Mabsūṭ*, IX, 78; Kāsānī, *Badāʾiʿ*, VII, 65. For the difference between *sāriq*, *muntahib*, and *mukhtalis*, see Johansen, “La mise en scène du vol par les juristes musulmans,” in Maria Pia di Bella (ed.), *Vols et sanctions en Méditerranée* (Amsterdam: Éditions des Archives Contemporaines, 1998), 47–9.

¹⁴⁰ The tradition is related by Bayhaqī, *al-Sunan al-kubrā*, VIII, 233 (*bāb mā fī ḥadd al-lūṭī*); Ṭabarānī, *al-Muʿjam al-awṣat*, IV, 267.

¹⁴¹ Criticism of the tradition in Ibn Hajar al-ʿAsqalānī, *Talkhīṣ al-ḥabīr fī takhrīj aḥādīth al-Rāfiʿī al-kabīr* (Medina: Sharikat al-Ṭibʿa al-Fanniyya al-Muttaḥida, 1384/1964), IV, 55; Daylamī, *Firdaws al-akhbār* (ed. Zaghlūl), V, 161.

¹⁴² Sarakhṣī, *Mabsūṭ*, IX, 78. The “true sense [*maḍlūl al-waḍʿ*]” is that meaning which God bestowed on a word when he gifted language to mankind. I thank Roy Mottahedeh for clarifying this issue for me.

Instead, they claimed, the goal (*murād*) of the tradition was to underline the severity of the sin.¹⁴³ In other words, the tradition judges the offense in moral, not legal terms. The implication is that punishment will happen in the next world at best, but not in this world.

All in all, then, the Ḥanafī authors tended to present an overwhelming plethora of arguments against the lexicographical equation between fornication and sodomy. However, the real focus of the Ḥanafīs' discussion of sodomy is neither the first line of reasoning that I have retraced here (the refutation of textual proofs from the Qur'ān, *sunna*, and *ijmā'*), nor the second (the refutation of lexical arguments). Instead, what is at the center of the debate is the question of whether sodomy was semantically (*min ḥaythu l-ma'nā*) subsumable under the norm regulating fornication. Abū Yūsuf and Shaybānī, contrary to what was sometimes imputed to them, never argued that sodomy and fornication were lexically the same, nor that sodomy was fornication *tout court*. Most Ḥanafī authors take care to point out that their argument was, rather, that sodomy was *like* fornication (*al-liwāṭ ka-l-zinā*), or that sodomy is contained within the meaning, or function, of the norm regulating fornication (*al-liwāṭ fī ma'nā l-zinā*).¹⁴⁴ In the words of Ibn al-Humām: "They [Abū Yūsuf and Shaybānī] were cognizant of the fact that it [sodomy] is not exactly the same as fornication, but that the legal qualification [of sodomy] is the legal qualification engendered by fornication [*bal ḥukmuḥu ḥukm al-zinā*]."¹⁴⁵ This is the line of reasoning which I propose to analyze next.

Semantic arguments

While arguments about the textual and lexical status of sodomy can appear to lack analytical depth, with the discussion about the "meaning" or "function" (*ma'nā*) of fornication vis-à-vis sodomy one enters into a thicket of technical legal reasoning. Let us recall that, for the Ḥanafīs, this debate was not about analogy, but rather about *a fortiori* implication. The pro-*ḥadd* Ḥanafīs, Sarakhsī relates, argued that sodomy is encompassed by the meaning of fornication, and that the ruling against fornication applies to sodomy "on the basis of the [implied] meaning of the revealed text, not through analogy [*bi-dalālat al-naṣṣ lā bi-l-qiyās*]."¹⁴⁶ Kāsānī summarized the argument of the pro-*ḥadd* party thus: "the existence of a revealed text that prescribes *ḥadd* in that case [fornication] is tantamount to a text in this case [sodomy] [*wurūd al-naṣṣ bi-ṭjābi l-ḥadd hunāka yakūnu wurūdan hāhunā dalālatan*]."¹⁴⁷ Bābartī, expanding on Sarakhsī, says that according to the pro-*ḥadd* camp "sodomy is subsumed under it [fornication], not by way of analogy but in the implied meaning [*fī l-dalāla lā bi-l-qiyās*], because analogy is not applicable to what is

¹⁴³ *Ibid.*, IX, 78. ¹⁴⁴ Marghinānī, *Hidāya*, II, 102; Kāsānī, *Badā'ir*, VII, 44.

¹⁴⁵ Ibn al-Humām, *Fath al-qadīr*, V, 263. ¹⁴⁶ *Ibid.*, V, 264. ¹⁴⁷ Kāsānī, *Badā'ir*, VII, 34.

rendered void by doubt.”¹⁴⁸ Again, the last part of the sentence refers to the Prophetic tradition that *ḥadd* was to be averted on the strength of doubt, doubt constituting an integral part of any exercise of *ijtihād*, including analogical reasoning.

Now what is the meaning, or function, of fornication? The pro-*ḥadd* followers of Abū Yūsuf and Shaybānī gave the following definition: “Fornication is a meaningful action [*fī l ma'nawī*] that has a goal [*gharad*], which is (1) the insertion of a genital [*farj*] into another genital (2) in a way that is forbidden, (3) without legal error, (4) in order to waste semen.”¹⁴⁹ In addition, according to Marghinānī, Abū Yūsuf and Shaybānī also stated that “fornication is (5) the execution of a natural carnal desire in a desired object.”¹⁵⁰ Claiming that “all this is present” in sodomy, the pro-*ḥadd* party could then conclude that the *ḥadd* punishment for sodomy was implied in the meaning of fornication.¹⁵¹

This, however, was contested heavily by the anti-*ḥadd* Ḥanafīs. “Since *ḥadd*,” says Kāsānī, “is a punishment that is encompassing [*mutakāmil*], it presupposes a crime that is [likewise] encompassing.”¹⁵² “Encompassing” – here the pro-*ḥadd* Ḥanafīs concurred with their opponents – meant that *all* aspects (*jāmi' al-ma'ānī*) that formed the definition of fornication were to be present in sodomy too.¹⁵³ If only one of these aspects was *not* found in sodomy, the entire argument that sodomy must be punished like fornication was rendered void. The anti-*ḥadd* Ḥanafīs took on every element of their opponents’ definition of fornication, and proceeded to discuss and refute it in its own right.

- (1) *Insertion of a genital into a genital*: The formula of “insertion of a genital into another genital” made it easy to think that the act of sodomy could indeed be subsumed under the “meaning” of fornication. Both anus and vagina were commonly regarded as genitals.¹⁵⁴ The Ḥanafite Kāsānī, however, insisted that it was necessary to establish a precise definition of what fornication meant “according to the customary usage in Islamic jurisprudence [*fī 'urf al-shar'*].”¹⁵⁵ Kāsānī’s teacher and father-in-law Samarqandī (d. 539/1144) had defined fornication (*zinā*) as “forbidden sexual intercourse [*al-waṭ' al-ḥarām*],” explaining that “sexual intercourse” was “insertion of the penis into the woman’s genital [*ilāj farj al-rajul fī farj al-mar'a*].”¹⁵⁶ Kāsānī took this a little farther, replacing the word *farj* (“genital”) with the more precise term *qubl* (“vagina”), arriving at the following definition:

¹⁴⁸ Bābartī, *Ināya*, V, 263. ¹⁴⁹ Sarakhsī, *Mabsūt*, IX, 77.

¹⁵⁰ Marghinānī, *Hidāya*, II, 102; Ibn al-Humām, *Fath al-qadīr*, V, 264; Zaylaī, *Tabyīn al-ḥaqā'iq*, III, 181; Ibn Nujaym, *Baḥr*, V, 17.

¹⁵¹ Sarakhsī, *Mabsūt*, IX, 77. ¹⁵² Kāsānī, *Badā'ī*, VII, 34. ¹⁵³ Sarakhsī, *Mabsūt*, IX, 78.

¹⁵⁴ *Ibid.*, IX, 77. For the Shāfi'īs, see Ghazālī, *Wasī*, VI, 440; Shīrāzī, *Muhadhdhab*, I, 185: *al-liwāt ka l-waṭ' fī l-farj*.

¹⁵⁵ Kāsānī, *Badā'ī*, VII, 33.

¹⁵⁶ 'Alā al-Dīn Muḥammad b. Aḥmad al-Samarqandī, *Tuḥfat al-fuqahā'* (Beirut: Dār al-Kutub al-'Ilmiyya, 1405/1984), III, 138.

“Fornication is forbidden sexual intercourse in the vagina of a woman.”¹⁵⁷ Thus, Samarqandī and Kāsānī could conclude, the standard formula of “insertion of a genital into another genital” did in fact *not* include the case of sodomy. In sodomite relations between men, obviously neither a woman nor a vagina was involved. This line of reasoning seems radical, but Kāsānī did not hesitate to spell out such conclusions, as other examples demonstrate.¹⁵⁸

- (2) *Forbiddenness*: All jurists agreed that sodomy was a forbidden act, however with some variations in their opinions. The pro-*ḥadd* faction argued that sodomy was more reprehensible than fornication because, unlike in fornication, the infraction could never be undone by subsequent marriage.¹⁵⁹ However, the contrary opinion, namely, that sodomy did not possess the same degree of forbiddenness (*taḥrīm*) as fornication, also had some currency.¹⁶⁰ At any rate, such evaluations of the degree of illicitness of sodomy were somewhat beside the point. The point for the anti-*ḥadd* Ḥanafīs was, rather, this: from the fact that an action is morally reprehensible (*ḥarām* in the ethical sense) it does not follow that the action deserves punishment. As Ibn al-Humām puts it,

the certainty that it [sodomy] is morally reprehensible does not support the claim that it necessitates the same legal consequence as the other [fornication] [*lā ‘ibrata bi-awkaḍiyat al-ḥurma fī thubūt ‘ayn mūjib al-ākhar*] ... This is why drinking urine, which is generally regarded as impure, is not punished with *ḥadd* like drinking wine is.¹⁶¹

In other words, according to the anti-*ḥadd* Ḥanafīs, what is reprehensible in the eyes of God – and by implication punishable in the hereafter – is not necessarily subject to innerworldly adjudication, let alone the object of punishment. For them, “morally reprehensible” and “legally forbidden” were distinct categories.

- (3) *Legal error*: If the pro-*ḥadd* Ḥanafīs insisted that sodomy was *a fortiori* implied in fornication, they had to show that there could be no uncertainty or doubt (*shubha*) on the part of the partners in sodomy, that is, that both offenders must have a “guilty mind” (Lat. *mens rea*).¹⁶² They held that sodomy was known by everybody to be forbidden (*ḥarām*). “The object must be considered under the aspect of property,” they pointed out, explicating that “it is possible to conceive it [intercourse] as a right of property of the vagina; however, it is impossible to conceive it

¹⁵⁷ Kāsānī, *Badā’i*, VII, 33.

¹⁵⁸ Cf. *ibid.*, VII, 34, where Kāsānī argues that a woman is by definition incapable of performing fornication, for this requires *active* penetration. She can be called an “fornicator” only in the figurative sense. In reality, however, she is at best passively “fornicated [*mazniyya bihā*].” One result of this line of reasoning is that if a woman has sexual intercourse with a boy who is not legally responsible (*bāliḡh*) and therefore by definition incapable of fornication, the woman is immune from punishment too. The Shāfi’is held the opposite to be true.

¹⁵⁹ Ibn al-Humām, *Fatḥ al-qadīr*, V, 264; Ḥaṣkafī, *Durr*, IV, 192.

¹⁶⁰ Sughdī, *Fatāwā*, I, 269: *al-liwāṭ bi-l-rijāl laysa fī l-taḥrīm ka l-jamā’*.

¹⁶¹ Ibn al-Humām, *Fatḥ al-qadīr*, V, 264. Cf. Zayla’ī, *Tabyīn al-ḥaqā’iq*, III, 181.

¹⁶² For *mens rea* and *shubha* in classical Islamic doctrine, see Peters, *Crime and Punishment*, 20–3. Cf. the case mentioned by Muhammad ‘Ata al Sid Sidahmad, *The Hudud* ([Kuala Lumpur]: n.p., 1995), 215, namely, that if a man finds a woman in his bed, mistaking her for his wife, and copulates with her, there is no divinely ordained punishment if his claim of legal error is strong, citing Shīrāzī, *Muḥadhdhab*, II, 268.

as a right of property of the anus.”¹⁶³ Given that sodomy cannot be thought of as a right, legal error, that is, the erroneous belief that the act is licit (*shubha fī l-fī'l*), cannot be assumed on the part of the active partner in sodomy.

To sodomize one's wife was indeed conceived, by some jurists, as a prerogative of the husband.¹⁶⁴ But even if one were to assume that the anus of a person constitutes legal property, the absence of a husband in the act of sodomy thwarted this line of reasoning. Clearly, between men, the anus remained a part of the body that had to be covered up (*mastūr*) under all circumstances.¹⁶⁵ Perhaps the anti-*ḥadd* faction could have argued that the (correct) belief that sodomy was not to be punished like fornication could engender the (erroneous) assumption that no considerations of property played a role. But no such lines of reasoning can be found in the literature. It appears that the anti-*ḥadd* Ḥanafis agreed that sodomy was, viewed under the aspect of property, as clearly against the law as fornication and therefore not subject to considerations of legal error. At any rate, they simply preferred not to challenge their opponents in this regard.

- (4) *Wasting of semen*: The proponents of *ḥadd* for sodomy pointed out that the “wasting of semen” was even more evident in the case of sodomy than in the case of fornication. In the latter, they argued, “the object is [like] a plantation, and one imagines that the action is [like] fertilizing [a field], even if the fornicator has no intention to do so. This, however, is not imagined here [in sodomy], therefore the wasting of semen is more evident.”¹⁶⁶ Adding to the gravity of the act was that a child that would serve God might spring forth from fornication, but not from sodomy.¹⁶⁷

The opponents of this argument among the Ḥanafis did not claim that the semen was *not* wasted. Their strategy was to point out that this circumstance carried no legal weight. Again, they drew a line between the act as something morally reprehensible and as something legally punishable. Kāsānī called the spilling of semen to no end despicable (*mahīm*) but declared that it was allowed to spill semen in *coitus interruptus*, a well-recognized opinion among the jurists.¹⁶⁸

As for the child that might be conceived in the act of fornication between man and woman, the anti-*ḥadd* Ḥanafis saw things completely differently from their pro-*ḥadd* opponents. The danger of procreation, they declared, is the true reason why fornication is punishable by *ḥadd*, for the child that springs forth from an adulterous relation is doomed (*hālik*) to grow up without a father, its pedigree is eternally disputed, and it enters adulthood “in the worst of all fashions.”¹⁶⁹ “In

¹⁶³ Sarakhsī, *Mabsūt*, IX, 78. An author as early as Shaybānī, *al-Jāmiʿ al-ṣaḡhūr*, I, 280, argued that the *ḥadd* for fornication was conditional on the absence of legal error about property. See, however, Shirāzī, *Muhadhḥab*, II, 57, reporting the opinion that dowry (*mahr*) is not incumbent upon penetration of the anus because this is not part of what is acquired (*mamlūk*) in the marriage contract.

¹⁶⁴ Ibn al-Humām, *Faṭḥ al-qadīr*, V, 263, cites the *K. al-Kāfī* by the Ḥanafite al-Ḥakīm al-Shahīd from Balkh (fourth/tenth c.) for this position, a work commented upon by Sarakhsī in his *Mabsūt*. Against the husband's right, see Shāfiʿī, *Umm*, V, 94; Shirāzī, *Muhadhḥab*, II, 66.

¹⁶⁵ Sarakhsī, *Mabsūt*, IX, 77. ¹⁶⁶ *Ibid.*, IX, 78. ¹⁶⁷ Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181.

¹⁶⁸ Kāsānī, *Badāʾiʿ*, VII, 34; anon., *Baḥr al-fawāʾid* (tr. Meisami), 164. See also Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181; Ibn al-Humām, *Faṭḥ al-qadīr*, V, 264. Ghazālī also sanctioned the practice. See Michael Winter, “Islamic Attitudes Toward the Human Body,” in Jane Marie Law (ed.), *Religious Reflections on the Human Body* (Bloomington: Indiana University Press, 1995), 41.

¹⁶⁹ Ibn al-Humām, *Faṭḥ al-qadīr*, V, 264.

fornication,” says Kāsānī, “there is confusion of pedigree, and filiation is ruined; this is not there in the act [of sodomy].”¹⁷⁰

- (5) *Natural desire*: The pro-*ḥadd* Ḥanafīs, always seeking to show that semantic definitions of fornication and sodomy were congruent, argued that sodomy was like fornication in the sense of a “strong natural desire.” “It is no secret,” the position of the pro-*ḥadd* party is summarized by Zaylaʿī, “that the anus is something that is desired, for an object is desired for its qualities of softness and warmth, and the back genital is like the front genital in this respect. This is why people of sound reason covet it like they covet the front genital, and it occurs as frequently as fornication, nay, more frequently.”¹⁷¹ Already Sarakhsī had talked about the matter in very similar terms: “If a man knew nothing about the divine law, he would not differentiate between the two.”¹⁷² In the Saljūq period, there seems to have been quite a vigorous debate about this topic, including beyond the confines of the intra-Ḥanafī controversy. The discussion was embedded in the question of whether there was sodomy in paradise.¹⁷³ Can sodomy be conceived as a “natural” desire of man, as something *mushtahā tabʿan*,¹⁷⁴ that is, as an act which the inhabitants of paradise will indulge in at their leisure? Or is sodomy, in addition to being an act *contra legem Dei*, also an act *contra naturam*?

The Ḥanbalī Ibn ʿAqīl (d. 513/1119) expressed himself about the question, and two of Ibn ʿAqīl’s Saljūq contemporaries, the Ḥanafī Abū ʿAlī b. al-Walīd al-Muʿtazilī (d. 513/1119)¹⁷⁵ and the Shāfiʿī Abū Yūsuf al-Qazwīnī (d. 488/1095)¹⁷⁶ are remembered as being the first to debate the point. The thought of homosexuality in paradise is adumbrated by the Qurʾān, which states, rather ambiguously, that the inhabitants of paradise will be attended by youthful male servitors (*ghilmān*: 52:24; *wildān*: 56:17, 76:19).¹⁷⁷ Abū Yūsuf al-Qazwīnī rejected the idea, arguing that homosexuality was a disease (*āḥa*) that was inherently evil (*qabīḥ*). Paradise, however, is free of diseases. Abū ʿAlī b. al-Walīd, on the other hand, claimed that homosexuality was, like wine, forbidden only in *this* world. While in this world, he admitted, homosexuality was a vice disturbing the order, no such fears applied to the situation that obtained in paradise, where only the aspect of pure pleasure in the act

¹⁷⁰ Kāsānī, *Badāʾiʿ*, VII, 34. Cf. Sarakhsī, *Mabsūt*, IX, 78.

¹⁷¹ Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181. ¹⁷² Sarakhsī, *Mabsūt*, IX, 77.

¹⁷³ This discussion appears relatively late in the Ḥanafī literature: Ibn al-Humām, *Fatḥ al-qadr*, V, 263; Ibn Nujaym, *Bahr*, V, 18; Ḥaskafī, *Durr*, IV, 192; Ibn ʿAbidīn, *Ḥāshiyā*, IV, 28. In Maʿarrī’s *Risālat al-ghufrān*, 301, Iblīs maliciously asks the hero of the story, the poet Ibn al-Qāriḥ, whether there is sodomy in paradise, given that intercourse with female virgins is permitted. Ibn al-Qāriḥ recoils in horror at the suggestion.

¹⁷⁴ Sarakhsī, *Mabsūt*, IX, 77.

¹⁷⁵ He was the chief of the Muʿtazilites at Baghdad and taught Ibn ʿAqīl. See Sabari, *Mouvements*, 114.

¹⁷⁶ Abū Yūsuf ʿAbd al-Salām b. Muḥammad b. Yūsuf b. Bundār al-Qazwīnī lived forty years in Egypt before dying at Baghdad in 488/1095. See ʿUmar Riḍā Kaḥḥāla, *Muʿjam al-muʿallifin* (Beirut: Muʿassasat al-Risāla, 1414/1993), II, 150c–151a.

¹⁷⁷ On the *ghilmān*, see Charles Wendell, “The Denizens of Paradise,” *Humaniora Islamica* 2 (1974), pp. 29–59, esp. 33, 45, 56–59. Wendell marshalls convincing evidence for the theory that the Qurʾānic *ghilmān*, like the *ḥūr* of paradise, have their precedents in pre-Islamic poetry praising the banquets of pagan Arab noblemen.

remained (*lam yabqa illā mujarrad al-iltidhād*).¹⁷⁸ Postclassical Ḥanafī jurists took the side of Abū Yūsuf al-Qazwīnī in rejecting the idea, but the debate suggests that jurists in the Saljūq period had an awareness that the moral status of homosexuality could be judged in different ways.

However, we must again take care to distinguish the moral from the legal realm. The position of Abū ‘Alī b. al-Walīd appears to divest sodomy from its stigma of being an unnatural vice. However, there is the danger of reading more into the Ḥanafī jurists than they themselves had in mind. Let us recall that the pro-*ḥadd* Ḥanafīs defended the “naturalness” of the sodomizing impulse in order to assimilate sodomy to fornication, and thereby draw the conclusion that sodomy had to be punished just as harshly. If those claiming there was no *ḥadd* for sodomy wanted to challenge the pro-*ḥadd* party in this regard, they were obliged to argue *against* the thesis of a natural drive. Two answers came to their minds. First, they simply posited that in fact the natural thing to desire was the vagina of a woman, never the anus.¹⁷⁹ Second, a difference between the active and the passive partner could be assumed. According to this line of reasoning, unlike in fornication, in sodomy only one of the two partners solicits sexual union.¹⁸⁰ Only in the case of an unnatural disposition could the passive partner have the desire to be sodomized.¹⁸¹ In consequence, most Ḥanafī authors agreed that sodomy occurred less frequently than fornication, because there could be only one solicitor (*dārī*), by virtue of which the number of cases is cut down to half that of fornication.

Kāsānī had argued that the divinely ordained punishments were based on the idea of hindrance (a meaning contained within the semantic field of the root *ḥ-d-d*).¹⁸² Prevention (*zajr*), then, is the basic rationale of the divinely ordained punishment for fornication. Since sodomy, Kāsānī argues, is not widespread, prevention of sodomy is not necessary to the same degree as in (heterosexual) fornication. Therefore, the underlying concept (*ma‘nā*) that motivates the divinely ordained punishment for fornication is inapplicable to sodomy.¹⁸³

Sodomy, privacy, and morality

The arguments of the anti-*ḥadd* faction can be summarized thus: fornication and sodomy may be equally forbidden in ethical terms and, yes, spilling of semen to no end is indeed a feature of sodomy. But the fact that sodomy is morally reprehensible bears no legal weight. The anti-*ḥadd* Ḥanafīs appear to grant that legal error in the sense of a false assumption of property – a much-discussed possibility in fornication – is not something that can be easily

¹⁷⁸ Ibn ‘Abīdīn, *Ḥāshiyā*, IV, 28.

¹⁷⁹ Sarakhsī, *Mabsūt*, 78. Cf. Ḥaṣkafī, *Durr*, IV, 192: *al-zinā laysa bi-ḥarām ṭab’an*.

¹⁸⁰ Kāsānī, *Badā’ir*, VII, 34; Marghinānī, *Hidāya*, II, 102; Ibn al-Humām, *Fath al-qadīr*, V, 264.

¹⁸¹ Bābartī, *‘Ināya*, V, 263. ¹⁸² Kāsānī, *Badā’ir*, VII, 33. ¹⁸³ *Ibid.*

imagined in sodomy. But here is where the similarities end. Sodomy lacks a number of crucial aspects without which it is impossible to judge it like fornication (*li-ajli quṣūrihi imtana'a l-ilḥāq bihi*).¹⁸⁴ For the anti-*ḥadd* Ḥanafīs, the “missing” elements in the semantic congruence between fornication and sodomy were basically of three kinds. First, in sodomy there was no penetration in what was customarily thought to be the object of fornication, that is, the vagina. Second, it could not be assumed that in sodomy there was a natural desire as there was in heterosexual fornication. Third, sodomy was devoid of the danger of procreation and, therefore, of the ruin of the principle of filiation.

Such differences could perhaps have been overcome if analogical reasoning had been an option (depending on from which attributes the *ratio legis* would have been made to depend).¹⁸⁵ In fact, the anti-*ḥadd* Ḥanafīs suspected the pro-*ḥadd* faction precisely of drawing an analogy from fornication to sodomy.¹⁸⁶ However, for the Ḥanafīs, analogical reasoning in the divinely ordained punishments remained anathema. Instead, *a fortiori* congruence of *all* aspects or “meanings [*maʿānī*]” was the requirement *sine qua non*. Kāsānī, as emerges from my discussion, was the Ḥanafī jurist who took this maxim most seriously. If the “meaning” of sodomy was not completely encompassed by the meaning of fornication, a transfer of the divinely ordained punishment from fornication to sodomy was impossible. As Bābartī concluded, “if it [sodomy] does not have the same meaning [as fornication], it cannot be considered subsumable under it by way of linguistic implication (*dalāla*).”¹⁸⁷ Zaylaʿī put it this way: “It cannot be judged like fornication on the basis of the implied meaning [*bi-ṭarīq al-dalāla*], because the condition of implication is that one case is congruent [*mathal*] with the other.”¹⁸⁸ To show such congruency, however, is an endeavor that from the beginning was likely to fail. “This is very difficult to do,” states Ibn al-Humām, concluding that “it seems as if there is punishment only in the hereafter.”¹⁸⁹

Again, let us raise the question of whether the Ḥanafī reluctance to analogize the divinely ordained punishments limited the scope of criminal law. As far as sodomy, and by implication homosexuality, is concerned, this question can now be answered positively. Judging from the comparative space devoted to the arguments of the anti-*ḥadd* faction in the Ḥanafī *furūʿ*, it appears that a majority of anti-*ḥadd* jurists among the Ḥanafīs argued that there was no divinely ordained punishment for sodomy, since it was thought of as lying outside the realm of the law. By and large, sodomy was conceived as a private

¹⁸⁴ Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181.

¹⁸⁵ Which elements of the *ʿilla* of the punishment for fornication can be found in the act of sodomy – a discussion that lies outside the scope of this study – remains questionable. As Cass R. Sunstein points out, perceptions of likeness are socially construed conventions. See his “On Analogical Reasoning,” 748.

¹⁸⁶ Sarakhṣī, *Mabṣūʿ*, IX, 78. ¹⁸⁷ Bābartī, *ʿInāya*, V, 263.

¹⁸⁸ Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 181. ¹⁸⁹ Ibn al-Humām, *Faḥ al-qadīr*, V, 264.

matter between the individual and God. This is further illustrated by the Ḥanafī view that if a landlord discovers that his tenant engages in sodomy in the house, he has no right to eject him.¹⁹⁰ By refusing to impose the *ḥadd* punishment on sodomites, the classical Ḥanafī jurists contributed to a tendency to protect the private sphere from the law. In their view, the divine law as they practiced it did not reach into the individual's private realm of sexual orientation and practices.

However, this conclusion has two important caveats. First, despite the removal of the threat of *ḥadd*, sodomy continued to be seen, albeit perhaps to a lesser degree, as immoral.¹⁹¹ Two Ḥanafī jurists of the tenth/sixteenth and eleventh/seventeenth centuries argued that the absence of a divinely ordained punishment for sodomites was ultimately worse for them because thus their sins could not be expiated before the Final Judgment.¹⁹² And, as for punishments of sodomites in hell, there were plenty, as was noted earlier (see chapter 4).¹⁹³ Second, other punishments for sodomy could be envisaged, punishments that lay outside the category of the divinely ordained punishments, notably the so-called discretionary or *ta'zīr* punishments. It is to this category of punishment that I turn next.

¹⁹⁰ Shaykh Niẓām et al., *al-Fatāwā al-'ālamgīriyya*, IV, 463.

¹⁹¹ This shows that the jurists were capable of differentiating between ethical and legal norms. On this issue, see further Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), 201; Johansen, "Die sündige, gesunde Amme: Moral und gesetzliche Bestimmung (*ḥukm*) im islamischen Recht," *Welt des Islams* 28 (1988), 264–82; Johansen, "Wahrheit und Geltungsanspruch," 1035–44.

¹⁹² Ibn Nujaym, *Bahr*, V, 18; Ḥaṣḥakfī, *Durr*, IV, 192–3. This illustrates that Ḥanafī jurists, against what is claimed by Peters, *Crime and Punishment*, 31, 53–4, could at times embrace the doctrine that *ḥadd* punishments atone for sins in this world. Cf. Shāfi'ī, *Umm*, VI, 138, who reports from the Prophet: *la'alla l-ḥudūd nazalat kaffāratan*. A similar *ḥadīth*, stating that this-worldly punishments for polytheism, theft, fornication, killing of infants, slander (*buhtān*), and rebellion against the law (*lā ta'sū fī ma'rūfīn*) are expiatory acts (*kaffārāt*), can be found in Bukhārī, *Ṣaḥīḥ*, I, 15, IV, 1857, passim; Muslim, *Ṣaḥīḥ*, III, 1333; Tirmidhī, *Sunan*, IV, 45; Ibn Ḥanbal, *Musnad*, V, 314.

¹⁹³ Cf. p.154. See also the Prophetic tradition that sodomy is "what I fear most for my community after I die." See Ibn al-Jawzī, *Dhamm al-hawā*, 207.

Discretionary punishment (*ta'zīr*) and the public sphere

Discretionary punishment (*ta'zīr*) and sodomy

As noted at the end of the [preceding chapter](#), sodomy, including sodomy in homosexual relations, did not completely escape the threat of this-worldly punishment. Even the anti-*ḥadd* Ḥanafīs agreed that sodomites could be punished with *ta'zīr* instead of *ḥadd*.¹ Commenting on the diverse punishments inflicted against sodomites by the Companions, Kāsānī for example points out that their difference of opinion indicates that they applied *ta'zīr*. This he infers from the fact that only *ta'zīr* allows for unrestrained personal reasoning (*ijtihād*) and, therefore, for difference of opinion (*ikhtilāf*). The divinely ordained punishments, on the other hand, are known strictly through reliance (*tawqīf*) on the Qur'ān, *sunna*, or consensus.²

In general, as I have noted earlier, the historiography of the Saljūq period gives little information in terms of the punishments that sodomites were made to suffer. Whether from this lack of information one can gather that the jurists' discussions of sodomy remained "to a large extent theoretical," and that "homosexual relations have always been tolerated,"³ however, is not immediately evident. There is at least one report dating from the Saljūq period that indicates that sodomites were the target of punitive prosecution. Ibn al-Jawzī relates that in the year 538/1143 in Baghdad a man was arrested on the charge of "immoral behavior" with a boy (*yuqāl annahu fasaqa bi-sabiy*). He was thrown into a pit, then made to climb the minaret of the Sa'āda *madrasa*, and pushed down to fall to his death.⁴ This is what the Companion Ibn 'Abbās, according to tradition, had recommended as the

¹ Shaybānī, *al-Jāmi' al-ṣaḡhīr*, I, 282; Sarakhsī, *Mabsūṭ*, IX, 77; Kāsānī, *Badā'ī*, VII, 34; Qāḍikhān, *Fatāwā*, III, 480; and *passim* in later commentaries.

² Kāsānī, *Badā'ī*, VII, 34. Cf. Marghinānī, *Hidāya*, II, 102, who credits Abū Ḥanīfa with saying that the Companions' Judgment was based on considerations of state expediency (*siyāsa*).

³ *EI2*, s.v. *Liwāt*, V, 776b (C. Pellat and eds.).

⁴ Ibn al-Jawzī, *Muntaẓam*, XVIII, 33. El-Rouayheb, *Before Homosexuality*, 151, reports a case in which two young men convicted of sodomy were thrown from the minaret of the Umayyad mosque in Damascus in 1807.

punishment for sodomites.⁵ None of the procedural details of this case are known. Taking into account other pieces of evidence, however, it may be possible to gauge at what moment the tendency toward indulgence receded in favor of actual physical punishment. The legal literature provides some clues as to exactly when *ta'zīr* may have changed from a theoretical directive to a punitive practice. This does not apply only to the issue of punishment meted out to sodomites. A discussion of the topic may also yield broader insights into the theory and practice of *ta'zīr*, a category in Islamic penology that is somewhat difficult to pin down.

The Ḥanafī jurists define *ta'zīr* in the negative, as the punishment for every crime (*jināya*) for which no concrete punishment was specified in the Islamic normative system (*laysa lahā ḥadd muqaddar fī l-shar'*).⁶ The Shāfi'ī Shīrāzī (d. 476/1083) described *ta'zīr* as the punishment for every sinful action (*ma'siya*) for which there was neither *ḥadd*, nor *talio*, nor the possibility for atonement (*kaffāra*).⁷ *Ta'zīr* thus functioned as a residual category under which was subsumed every offense for which retribution was otherwise unspecified in the Qur'ān or *sunna*, or by consensus of the scholars.⁸ Arguably, Shīrāzī's formula is rather vague. In all likelihood, what counted as a crime (*jināya*, *ma'siya*) was not always readily discernible. To make things worse, as the common English translation as "discretionary" punishment suggests, *ta'zīr* was meted out without clear definitions of either the procedural details or the punishment itself. Samarqandī (d. 539/1144) tried to impose certain procedural limitations on *ta'zīr* (e.g., interdiction of indirect testimony, the *shahādat al-shahāda*, as in the *ḥudūd*), but later authors tended to lower procedural standards to those in civil law cases.⁹ For example, unlike in the *ḥudūd*, doubt (*shubha*) could not impede punishment in *ta'zīr*.

As for the nature of the punishment that was meted out, the jurists were eager to limit the amount of *ta'zīr* to less than the minimum of what was stipulated in the divinely ordained punishments, that is, forty lashes with the whip.¹⁰ However, this directive cannot be said to have been taken seriously,

⁵ Sarakhsī, *Mabsūṭ*, IX, 79; Zayla'ī, *Tabyīn al-ḥaqā'iq*, III, 181; Ibn al-Humām, *Fatḥ al-qadīr*, V, 265.

⁶ Kāsānī, *Badā'ī*, VII, 63. Similar definitions can be found in Samarqandī, *Tuḥfat al-fuqahā*, III, 148; Sarakhsī, *Mabsūṭ*, IX, 36.

⁷ Shīrāzī, *Muḥadhdhab*, II, 288. Peters, *Crime and Punishment*, 7, states that under *ta'zīr* and *siyāsa* fall "all other forms of sinful or socially and politically undesirable behavior." Cf. *ibid.*, 65: "In principle all forbidden or sinful acts, even if they do not constitute *ḥadd* offences, homicide or bodily harm, are punishable under the Shari'a."

⁸ A concise overview of the types of punishments, including *ta'zīr*, in Ḥanafī criminal law is offered by Johansen, "Eigentum, Familie und Obrigkeit." As for the general theory of *ta'zīr*, there is little I can offer that goes beyond Johansen's work, which does not however deal with *tashhīr* in any detail. Likewise, Peters, *Crime and Punishment*, mentions *tashhīr* only in passing, although he admits that it was "a common form of discretionary punishment." See *ibid.*, 34.

⁹ Samarqandī, *Tuḥfat al-fuqahā*, III, 148. His student Kāsānī is an early example of the later, more lenient position: *Badā'ī*, VII, 65. Cf. Johansen, "Eigentum, Familie und Obrigkeit," 53.

¹⁰ Sughdī, *Fatāwā*, II, 646.

even in theory. Not only are imprisonment¹¹ and beating¹² mentioned as types of *ta'zīr*, but the postclassical authors also list heavier penalties, including castration¹³ and execution.¹⁴ Almost limitless leeway was given to whomever had authority to implement *ta'zīr*. Again in theory, this was the Islamic judge, the *qāḍī*,¹⁵ but it appears that *ta'zīr* was more often inflicted directly by the repressive state apparatus on the authority of the ruler, especially as a punishment for reasons of state expediency (*siyāsa*). There is some debate as to when exactly the merger of *siyāsa* and *ta'zīr* came about. Johansen cites Marghinānī (d. 593/1197) as the earliest author who uses the two terms synonymously.¹⁶ However, earlier authors of the Saljūq period also attributed *ta'zīr* to the sole authority of the mundane ruler. “*Ta'zīr* is an educative measure (*ta'dīb*) taken by the sultān,” declared Sughdī (d. 461/1069),¹⁷ and Shīrāzī stated that the temporal ruler (*al-sultān*) may punish with *ta'zīr* “as he sees fit.”¹⁸ This suggests that already by the first half of Saljūq rule *ta'zīr* was, first and foremost, a function of the penal jurisdiction of the coercive state institutions. The historical sources corroborate this impression. They indicate that the market-inspector (*muḥtasib*) as well as the agents of the police (*shihna*, *shurṭa*) could inflict *ta'zīr* without consulting the *qāḍī*. Likewise, the diplomas of investiture from Saljūq and Khwārazmian times suggest that the police forces were called to apprehend, judge, and punish criminals with no regard for the *qāḍī*'s jurisdiction.¹⁹

In chapter 5, I argued that the Ḥanafī authors of the Saljūq period managed to defend a certain degree of immunity from punishment for the individual by limiting the scope of the divinely ordained punishments. On the

¹¹ This can be found already in Shaybānī, *al-Jāmi' al-ṣaḡhīr*, I, 282. From there, the formula was repeated by almost all later authors, for example Ibn al-Shīḥna, *Lisān al-ḥukkām*, I, 398. Ibn Nujaym, *Baḥr*, V, 18, mentions being put in a “pit” or “cistern” (*jubb*) as punishment.

¹² Bābartī, *Imāya*, V, 263; Ibn Nujaym, *Baḥr*, V, 18, and Ḥaṣkafī, *Durr*, IV, 191, relate from Aḥmad al-Ghaznawī (d. 593/1196–7), *al-Ḥawī al-quḍsi fi l-furū'* (Princeton University Library ms. Mach 1007) that flogging was the most correct opinion.

¹³ Ibn Nujaym, *Baḥr*, V, 18. However, in another place, Ibn Nujaym espoused a definition of mutilation (*muthla*), forbidden by a Prophetic *ḥadīth*, as “cutting off limbs.” See his *Rasā'il* (Beirut: Dār al-Kutub al-'Ilmiyya, 1400/1980), 117, from Ibn al-Humām, *Faḥḥ al-qadīr*, VII, 477. Sarakhsī, *Mabsūt*, X, 158, condemned castration (*khiṣā*) as mutilation, as did Kāsānī, *Badā'ī*, V, 122. See also Marghinānī, *Hidāya*, IV, 95.

¹⁴ Ibn al-Humām, *Faḥḥ al-qadīr*, V, 263; Ibn Nujaym, *Baḥr*, V, 18. Besides, a point that goes unnoticed in the secondary literature, the Ḥanafī jurists, while limiting the amount of lashes, unanimously stated that the beating was to be more painful in *ta'zīr* than in the *ḥudūd*. See Shaybānī, *al-Jāmi' al-ṣaḡhīr*, I, 287; Sarakhsī, *Mabsūt*, XXIV, 36; Samarqandī, *Tuḥfat al-fuqahā'*, III, 143; Kāsānī, *Badā'ī*, VII, 64; Marghinānī, *Hidāya*, II, 117.

¹⁵ See *EI2*, s.v. *Ta'zīr*, X, 405b (M. Y. Izzi Dien).

¹⁶ Johansen, “Eigentum, Familie und Obrigkeit,” 55. Tyan, *Histoire*, 451, claimed this development started no earlier than the Mamlūk period.

¹⁷ Sughdī, *Fatāwā*, II, 646.

¹⁸ Shīrāzī, *Muḥadhdhab*, II, 288. Cf. Ibn Nujaym, *Baḥr*, V, 18, who states that “the rule of *siyāsa* is that the imām implements it, not the *qāḍī*.” Lewis, “*Siyāsa*,” 3–14, argues that the term *siyāsa* acquired the narrow meaning of “punitive authority of the ruler” from late Saljūq times onwards.

¹⁹ Cf. pp. 48–51.

other hand, their uncritical espousal of *ta'zīr* as a state-run punishment appears to put this achievement at risk. A system of criminal law that eagerly defined the limits of the divinely ordained punishments but approved a seemingly limitless use of *ta'zīr* must seem contradictory. As Johansen has noted, “the coherence of the entire system of normativity” is called into question.²⁰

However, I would like to argue that Saljūq jurists (as well as those of later times) developed certain strategies to rein in *ta'zīr* practice. These strategies relied on a somewhat oblique kind of persuasive power. The jurists' *de facto* disempowerment in criminal law did not prevent them from claiming a measure of discursive hegemony over the public sphere, the arena in which punishment typically took place. This claim to authority was articulated, often between the lines, in the chapters they devoted to *ta'zīr* in their legal works. It was also, as I will try to demonstrate, put forth in discussions that treated of the divide between public and private and, especially, of the inviolability of the human body.

Discretionary punishment and public sins

It is interesting to note that the *ta'zīr* chapters in the works of the classical jurists pass more or less in silence over the *ta'zīr* punishment for sodomy. However, in the view of Sarakhsī, a person who declares sodomy licit is considered an apostate and therefore must be killed (*man istaḥalla dhālika l-fīl fa-innahu yaṣīru murtaddan fa-yuqtalu li-dhālika*).²¹ In this he is followed by Marghinānī²² and the “majority [*al-jumhūr*] of jurists.”²³ Paradoxically, then, according to these authors, to declare sodomy licit requires execution, while the actual act of sodomy is not to be punished, or at least not with *ḥadd*. Why this harsh condemnation of the first, seemingly less serious offense, and why this relative indulgence with regard to the second kind of behavior? To practice a vice, *prima facie*, would appear more grave than simply to condone it.

The Qur'ān urges the believers to “fight those who do not declare forbidden what God and His messenger have declared to be forbidden” (9:29). A wide definition of apostasy (*irtidād*), which according to most schools is to be punished with death, might in fact include acts of declaring sins licit.²⁴ However, another factor is to be reckoned with: what distinguishes the two cases of declaring sodomy licit and actually indulging in it is the element of publicness. Publicness, it seems, is what turned sins (such as acts of sodomy) into punishable offenses. Postclassical authors grant the ruler the right to execute sodomites under one condition: if the public good (*maṣlaḥa*) has to be defended for reasons of state expediency (*siyāsa*). This, one learns from a

²⁰ Johansen, “Eigentum, Familie und Obrigkeit,” 73. ²¹ Sarakhsī, *Mabsūt*, IX, 77.

²² Marghinānī, *Hidāya*, II, 102. ²³ Ḥaṣkafī, *Durr*, IV, 193; also Bābartī, *ʿInāya*, V, 262.

²⁴ Peters, *Crime and Punishment*, 64–5.

Ḥanafī legal textbook, is the case if someone engages in sodomy habitually (*idhā ʾrʾāda*).²⁵ Likewise, Shayzarī's *ḥisba* manual enjoins the *muḥtasib* to take repressive measures against sodomites if they come to his attention "regularly."²⁶ Arguably, to engage in a certain behavior habitually is in fact to "come out" with it, to reveal this behavior to the public. As do public utterances, habitual action carries sin into the public arena.

It appears that the homoerotic nature of the Saljūq sultān Sanjar's relationships to his slave-boys Sunqur and Qaymāz, his submission to their whims, which their outré behavior threatened to reveal to the public, was a significant factor leading to their execution. As has been argued, there is a common Islamic ethos of avoidance in acknowledging homoeroticism.²⁷ Anecdotes by the Persian satirist ʿUbayd-i Zākānī (d. c. 772/1370) show that homoeroticism was common and to a certain degree tolerated in medieval Persia. Hodgson stated that "[d]espite strong *Sharʿī* disapproval, the sexual relations of a mature man with a subordinate youth were so readily accepted in upper-class circles that there was often little or no effort to conceal their existence."²⁸ The statement should be nuanced. As the cases of Sanjar's slave-lovers suggest, there was acceptance of such relations as long as they remained within the private circles of the courtly élite. Once they entered the public arena, either by way of a public speech act or in the form of actual behavior, punishment was likely to follow.

A similar ethos underlies not only discussions of sodomy, but also of *taʿzīr* in general. At first sight, the *taʿzīr* chapters in the works of the classical authors appear to offer little more than random and incomplete lists of punishable offenses.²⁹ Sexual transgressions figure in these lists, as do selling wine, attempted theft, taking interest (*ribā*), professional wailing for the dead, effeminate behavior of men (*takhannuth*), and threats of violence in general.³⁰ What is remarkable, however, is the disproportionate weight given to the issue of calumny (*qadhf*) or insult (with the exception of *qadhf al-zinā*, which constitutes a *ḥadd* offense). Even an author as early as Shaybānī covers the

²⁵ Shaykh Nizām et al., *al-Fatāwā al-ʿālamgīriyya*, II, 150; Ūshī al-Farghānī, *al-Fatāwā al-Sirājiyya* (Calcutta: n.p., 1827), 242, also seems to point in this direction: *mān ʾrʾāda l-fisqa bi-anwāʾi l-faṣādi yuhdamu ʿalayhi baytuhu*.

²⁶ Shayzarī, *Nihāyat al-rubā*, 110. ²⁷ Murray, "The Will Not to Know," 14, 21–2.

²⁸ Hodgson, *Venture*, II, 145f.

²⁹ This may help to explain why these chapters have received relatively little attention in Western scholarship. There is a widespread belief that these were largely theoretical texts with little practical relevance, and that they do not help much to clarify the place of *taʿzīr* within the system of Islamic criminal law. One exception to this attitude is Johansen, "Eigentum, Familie und Obrigkeit," esp. 47–61. *EI2*, s.v. *Taʿzīr*, X, 406a–b (M. Y. Izzī Dien), relies chiefly on Muḥammad b. ʿIwad al-Sunāmī's (d. 734/1333) *ḥisba* manual *Niṣāb al-iḥtisāb*, not a legal text *strictu sensu*.

³⁰ The most exhaustive list is in Sarakhṣī, *Mabsūṭ*, XXIV, 36–7. See also Samarqandī, *Tuḥfat al-fuqahāʾ*, III, 148; Kāsānī, *Badʾiʿ*, VII, 63; Qādikhān, *Fatāwā*, III, 479–80; Marghinānī, *Hidāya*, II, 116–17; Shīrāzī, *Muhadhdhab*, II, 288.

topic over multiple pages.³¹ The chapters on *ta'zīr* in later Ḥanafī works of the classical period often focus on offenses of calumny, sometimes to the near exclusion of everything else.³² Qāḍikhān (d. 592/1196), for example, begins his chapter on “what necessitates and what does not necessitate *ta'zīr*” with a long list of invectives, such as “you sinner [*yā fāsīd*],” “licentious person [*fājir*],” “wicked person [*khabīth*],” “sodomite” [*lūfī*],” “catamite [*ma' būn*],” “swine,” “donkey,” “thief,” “unbeliever,” “heretic,” “son of a prostitute [*ibn al-qabḥa*],” and many others, too numerous to be repeated here.³³

The slanderer must be punished, says Marghinānī, “because he has harmed him [the slandered person] and disgraced him [*alḥaqa bihi l-shayin*].”³⁴ As one may ask, what exactly does Marghinānī mean by “disgrace”? And in what sense does slander bring about disgrace? It would appear that what Marghinānī has in mind is *public* slander, that is, verbal attacks on someone’s honor in front of an audience. Thus, besides offering interesting insights into the vernacular of the author’s time, lists of insults as related by Qāḍikhān or Ūshī al-Farghānī (d. end of sixth/twelfth c.) reflect the concern of the jurists with public speech acts.³⁵

The jurists also sought to define what could *not* count as slander. For example, Kāsānī argued that such insults as “you dog!” or “you swine!” could not be punished with *ta'zīr*, because the slanderer “only disgraced himself [*alḥaqa l-'ar bi-nafsihi*], by slandering someone else with something that it is not conceivable [*lā yutaṣawwar*].”³⁶ Kāsānī’s point is that nobody was ever going to believe that the slandered person *really* was a dog or a swine.³⁷ However, such distinctions were regarded as sophistry by others. They argued that, no matter how unrealistic the insult, to call someone a dog or a swine, “according to our custom [*fī 'urfīnā*] . . . is an infliction of disgrace [*shayin*].”³⁸ In some instances, even if the insult did not constitute calumny,

³¹ Shaybānī, *al-Jamī' al-ṣaghīr*, I, 289–91. Incidentally, Shaybānī also mentions *ta'zīr* for sodomites: I, 282. ‘Abbūd Shālījī devotes a whole volume of his *Mawsū'at al-'adhāb* to insult (*shatīma*). See *MA*, I, 17–547.

³² Samarqandī, *Tuhfat al-fuqahā'*, III, 148; Kāsānī, *Badā'ir*, VII, 63; Marghinānī, *Hidāya*, II, 116–17; Qāḍikhān, *Fatāwā*, III, 479–80.

³³ Qāḍikhān, *Fatāwā*, III, 479. See also Ūshī al-Farghānī, *Fatāwā*, 241.

³⁴ Marghinānī, *Hidāya*, II, 116. Cf. the tradition in Bukhārī, *Ṣaḥīḥ*, V, 2247: “Cursing a believer is like killing him [*man la'ana mu'minan fa-huwa ka-qatlīhī*].”

³⁵ Cf. the material from the Almoravid period collected by Delfina Serrano, “Twelve Court Cases on the Application of Penal Law Under the Almoravids,” in Masud, Peters, and Powers, *Dispensing Justice in Islam*, 486–7.

³⁶ Kāsānī, *Badā'ir*, VII, 63. See also Marghinānī, *Hidāyat*, II, 116; Qāḍikhān, *Fatāwā*, III, 480.

³⁷ Kāsānī appears to have a tendency to circumscribe the reach of *ta'zīr* for insults. Cf. his *Badā'ir*, VII, 44, where he explains that to call someone a *lūfī* does not imply calling him a homosexual, but is no more than a reference to the “people of Lūṭ [*ahl Lūṭ*],” which carries no legal consequences.

³⁸ Marghinānī, *Hidāya*, II, 116. Qāḍikhān, *Fatāwā*, III, 480, attributes this view to the “*faqīh* Abū Ja'far.” The Qur'ān (4:148) condemns the “shouting of evil words.” See S. M. Safwat, “Offences and Penalties in Islamic Law,” *Islamic Quarterly* 26 (1982), 175. Cf. Serrano, “Twelve Court Cases,” 486, stating that accusing an Arab of Umayyad lineage of being a slave without evidence constituted a *ḥadd* offense according the *mufṭīs* of the Almoravid period, who based this opinion on a *fatwā* by ‘Abd al-Raḥmān Ibn al-Qāsim (d. 191/806–7).

that is, lying about someone, but was an act of speaking truthfully about someone's vices, it was condemned.³⁹ The Qur'an (49:12) forbids speech imputing a vice (*ghība*) to someone categorically: "Do not impute vices to one another [*wa-lā yaḡtab ba'duhum ba'dan*]," and traditions from the Prophet place the slanderer in hell.⁴⁰ "Slander," as one *ḥadīth* has it, "is the fodder of [those who will be punished by being transformed into] dogs in hell."⁴¹

However, there are exceptions. According to Nawawī (d. 676/1277), talking behind someone's back is allowed in two cases: if gross injustices can thereby be prevented, or if it is a response to sins that are performed openly (*an yakūna mujāhiran bi-fisqihī*). "It is allowable to talk about someone if he has done something openly; otherwise it is not [*yajūzu dhikruhu bi-mā yujāhiru bihi wa-lā yajūzu bi-ghayrihi*]."⁴² This is a position that is repeated by later Ḥanafī authors.⁴³ Even harmless nicknames such as "the blue one [*al-azraq*]"⁴⁴ or "the short one [*al-qaṣīr*]" are allowed only if the goal was not to demean that person, "and if it is possible to name him differently, it is preferred."⁴⁵ A similar ethos of keeping sins secret is voiced by Sarakhsī. Regarding the *ḥājī* sacrifice (*nusuk*), he declares that "it is laudable to make it public [*al-tashhūr fihi awlā*], in order to tell others to do the same. However, if it [the sacrifice] is a penitentiary act [*kaffāra*], the reason for it is the perpetration of a reprehensible act [*maḥẓūr*]. Therefore it is better to veil oneself."⁴⁶ What emerges from these and similar discussions in the legal literature is what Eli Alshech, in a discussion of the notion of a private domestic sphere in Sunnī legal thought, has described in the following words:

³⁹ Anon., *Baḥr al-fawā'id* (tr. Meisami), 184–5. With regard to fornication, it was considered commendable not to notify the authorities, or to testify in court. See Peters, *Crime and Punishment*, 13.

⁴⁰ Anon., *Baḥr al-fawā'id* (tr. Meisami), 184. Ghazālī, *Kīmīyā-yi sa'ādāt* (tr. Ritter), 147. Ghazālī relates the following from the prophet Jesus: "What do you think," he asked his followers, "of a man who sees his brother sleeping and uncovers his nakedness so that he lies naked?" "Oh spirit of God! Who would ever do such a thing?" "You do it yourself when you uncover the fault of your brother, talking about it so that others know!" See *ibid.*, 113. Cf. Patricia Crone's remark with regard to the ethos of anti-exhibitionism: "Nakedness, physical or moral, was repulsive," in her *God's Rule*, 317.

⁴¹ Ibn 'Asākir, *Tārīkh madīnat Dimashq*, XLI, 399: *al-ghība idāmu kulāb al-nār*.

⁴² Nawawī, *Rawḍat al-tālibīn wa-'umdat al-muṭṭiyīn* (Beirut: al-Maktab al-Islāmī, 1405/1991), VII, 33. See the commentary by Ibn Ḥajar al-'Asqalānī, *Fath al-bārī*, X, 487. The Shāfi'ite Māwardī argued that the *muḥtasib* should not prosecute reprehensible acts which were not apparent. See Amedroz, "The Hisba Jurisdiction," 91. Cf. Qur'an 4:138: *lā yuḥibbu llāhu l-jahra bi-l-sū'i min al-qawli illā man zulīma*. For III *j-h-r*, see Lane, *Arabic-English Lexicon*.

⁴³ Ibn 'Abidīn, *Hāshiyā*, VI, 409; Aḥmad b. Muḥammad al-Ṭaḥṭāwī, *Hāshiyat al-Ṭaḥṭāwī 'alā Marāqī l-falāḥ* (Cairo: Būlāq, 1318/[1900]), I, 54. There is no talk of *ta'zīr* in this context, only moral condemnation. Qāḍikhān, *Fatāwā*, III, 479, held that there was no *ta'zīr* for the person who called a thief a thief and a sinner a sinner.

⁴⁴ According to Alfred Morabia, "Recherches sur quelques noms de couleur en arabe classique," *SI 21* (1964), 93–4, the color blue in classical Arabic has a pejorative meaning. Arabs therefore traditionally avoid the use of the term *azraq* altogether. Cf. Qur'an 20:102, which details that sinners will be blue on the Day of Judgment (*wa-naḥshuru l-mujrimīna yawma'idhin zurqan*). See Sabbagh, *La métaphore dans le Coran*, 95.

⁴⁵ Nawawī, *Rawḍat al-tālibīn*, VII, 33. ⁴⁶ Sarakhsī, *Mabsūt*, IV, 102.

[T]he majority view sanctions the persecution and prosecution of a transgressor only when he has committed his sin overtly, or when his sin is known publicly . . . A sin becomes a social hazard only when it is committed overtly and may be seen as a rebellious act against religious norms and/or against God. Unlike a covert sin, a public sin poses a serious threat to society and must be punished.⁴⁷

If the jurists had lost the battle over the control of the administration of punishment to the temporal authorities, they could still seek to defend the private sphere of Muslims by propagating the notion that only public offenses could be punished by *ta'zīr*. This went hand in hand with their attempt to reinforce the common ethos of anti-exhibitionism.

It is instructive in this regard to look at the ways in which the repressive state organs dealt with publicized sins. The office of the market-inspector (*muḥtasib*) has been mentioned in this study a number of times. As the “guardian of public space,” he was called to protect the fragile boundary demarcating the public realm from the private.⁴⁸ Traditionally, the *muḥtasib* was urged not to enter the private homes of people. However, when sins committed inside the homes in one way or another entered the public space he was allowed, according to some authors, to enter the house to investigate. For example, some were of the opinion that the sound of music and indecent laughter, coming out of windows and floating in the streets of the city, could prompt the *muḥtasib* to intervene.⁴⁹ Thus, as mentioned earlier, when in 535/1140–1 at Baghdad the *muḥtasib* entered the house of the preacher Maghribī, he found jars of wine and instruments there. It is interesting to note exactly *how* Maghribī was punished. In retribution for his offense of publicizing a sin, the bonvivant was himself “made public [*shuhhira*],” that is, he was paraded through the streets of Baghdad.⁵⁰ This punishment is echoed in a *ḥisba* diploma of investiture from the late Saljūq period. The diploma specifies that it is in the *muḥtasib*'s power “to show in public what is supposed to be veiled.”⁵¹ The punishment of “making someone public [*tashhīr*],” as is indicated by the chronicles, appears to have been the punishment *par excellence* of the *muḥtasib*.⁵²

⁴⁷ Alshech, “Do Not Enter Houses Other Than Your Own,” 325–6.

⁴⁸ See the discussion of the public/private divide in light of *ḥisba* by Yaron Klein, “Between Public and Private: An Examination of *ḥisba* Literature,” *Harvard Middle Eastern and Islamic Review* 7 (2006), 41–62.

⁴⁹ Mottahedeh and Stilt, “Public and Private,” 738. Jurists of the four schools differed as to the exact moment when misconduct ceases to be contained within the house, entering the public sphere and thus becoming subject to repression. The early Ḥanafīs had less strict demands in this respect than the Ḥanbalīs. See Alshech, “Do Not Enter Houses Other Than Your Own,” 291–332, esp. 301; Michael Cook, *Commanding Right and Forbidding Wrong*, 309, quoting Kāsānī, *Badā'ī*, V, 125:3, where the view is defended that one should enter a house from which music emanates without leave, since it is a duty (*farḍ*) to redress that which is forbidden (*taghyīr al-munkar*).

⁵⁰ Ibn al-Jawzī, *Muntaẓam*, XVIII, 9. ⁵¹ Waṭwāt, *Majmū'at al-rasā'il*, 81.

⁵² Public parading appears to have been common in retribution for “public” sexual offenses, such as entering the bath-house without a loincloth or prostitution: Ibn al-Jawzī, *Muntaẓam*, XVII, 323. According to Shī'ite law, pimping (*qiyāda*) is punished by *tashhīr*. See Muntaẓirī, *Hudūd*,

For the jurists, who competed for judicial authority with the *muhtasib* and other agents of *siyāsa*, the issue of “making things public [*tashhūr*]” clearly was of great importance. However, not only did they try to define the limits of what could be made public, and what kind of public misbehavior deserved punishment; they also discussed what “making sins public” required in retribution. This, I submit, was the punishment of ignominious parading, or shaming (*tashhūr*). I have discussed *tashhūr* at some length in terms of its history under the Saljūqs and its eschatological symbolism. However, *tashhūr* deserves to be analyzed in legal terms.⁵³ This will, I hope, further clarify the jurists’ view on law and morality, whether they were eager to prescribe punishment of sins or to promote a *laissez-faire* attitude, and how they distinguished between the public and the private sphere.

False testimony (*shahādat al-zūr*) and shaming in Islamic law

It is interesting to note that, in early Sunnī *fiqh*, *tashhūr* was thought to be distinct from *taʿzīr*. Abū Ḥanīfa is reported to have held the view that criminals are “paraded and not punished with *taʿzīr*,”⁵⁴ or that in certain cases it is enough for the judge to parade the offender, but that he must not add *taʿzīr* to it.⁵⁵ Such directives imply that *tashhūr* does *not* fall under the category of *taʿzīr*. If this is indeed Abū Ḥanīfa’s teaching, it must be remembered, however, that until the fifth/eleventh century *taʿzīr* did not constitute a generic category separate from other types of punishments, but simply meant something like “chastisement.”⁵⁶ In fact, a systematic approach to *taʿzīr* in the legal literature was slow to develop. The Ḥanafite Samarqandī seems to have been the first to point out that *ḥadd* and *taʿzīr* needed to be discussed each in its own right, and that the two types of punishment had a different function (*sabab wujūbihimā*) as well as different conditions of applicability (*sharāʾiṭ al-wujūb*).⁵⁷ It was not until *taʿzīr* had been recognized as a type of punishment *sui generis*, a stage achieved around early Saljūq times, that *tashhūr* could be

191. Dürr, *Nacktheit und Scham*, 275–9, reports a number of cases from medieval Europe, for example, in the *trecento* (fourteenth century) in North Italy, in which sexual offenders were paraded. Was there *tashhūr* of sodomites in medieval Islam? The Saljūq chronicles do not present any evidence for this, but Khaled el-Rouayheb, *Before Homosexuality*, 53, mentions the case of the Damascene poet Abū Bakr al-ʿUmarī (d. 1638), who was apprehended with a beardless boy “in a state which it would be vile to call by its vile name,” and punished with ignominious parading through the markets of the city.

⁵³ For a summary, see my “Legal and Cultural Aspects of Ignominious Parading (*Tashhūr*) in Islam,” *ILS* 14, 1 (2007), 81–108.

⁵⁴ Marghinānī, *Hidāya*, III, 132. ⁵⁵ Sarakhsī, *Mabsūt*, XVI, 145.

⁵⁶ This is also Schacht’s preferred translation. See his *Introduction*, 175. However, if Schacht’s goal is to distinguish *taʿzīr*, being a mere “chastisement,” from full-fledged “punishment,” his use of the term is inconsistent, for in a different context, he uses the phrase “punished . . . by *taʿzīr*”: *ibid.*, 187.

⁵⁷ Samarqandī, *Tuhfat al-fuqahāʾ*, III, 137. See also Kāsānī, *Badāʾiʿ*, VII, 33, who, like Samarqandī before him, criticizes Shaybānī for “treating the *ḥadd* for fornication together with the *ḥadd* for calumny and with *taʿzīr*.”

subsumed under it. Thus, Sarakhsī judged that *tashhūr* is “a form of *taʿzīr* [*nawʿ min al-taʿzīr*].”⁵⁸ Later authors were less nuanced. They flatly stated that public parade *was* in fact a *taʿzīr* punishment. They even attributed this view, by way of posthumous deduction (*takhrīj*), to Abū Ḥanīfa.⁵⁹

The place in which the jurists discuss the *tashhūr* punishment is the chapter on false testimony, or perjury (*shahādat al-zūr*).⁶⁰ Schacht stated that “[t]here is no punishment for ... false evidence; it is merely made known publicly [*taʿrīf*] ... According to some authorities only, the false witness is severely beaten and imprisoned.”⁶¹ Schacht’s statement is misleading in several respects. For one, false testimony was an offense that the jurists thought very grave, and therefore wanted to punish harshly.⁶² “False testimony is one of the gravest sins,” according to Kāsānī; “therefore it must be prevented in the strongest possible way [*yaḥtāju ilā ablagh al-zawājir*].”⁶³ Second, *tashhūr* (which Schacht mistook to be a simple “announcement,” or *taʿrīf*) is mentioned in the historical sources with great frequency, a fact that warrants the thought that *tashhūr* was in fact an important, or even central, element of

⁵⁸ Sarakhsī, *Mabsūt*, IV, 145. Marghinānī, *Hidāya*, III, 132, however, still seems to think that *tashhūr* and *taʿzīr* are generically different.

⁵⁹ Ḥaṣkafī, *Durr*, V, 503: ‘uzzira bi-l-tashhūr. Ḥaṣkafī reports this statement from Sirāj al-Dīn ‘Alī b. ‘Uthmān Ūshī al-Farghānī (d. end of sixth/twelfth c.). However, Ūshī al-Farghānī, *Fatāwa*, 481, does not use the term *taʿzīr* with regard to *tashhūr* of the false witness. He merely states that the false witness is “paraded in the market [*yushahharu fī l-sūq*].” See also Ibn ‘Abidīn, *Hāshiya*, VII, 238: *taʿzīruhu al-tashhūr*. Tyan, *Histoire*, 650, also classifies *tashhūr* as a *taʿzīr* punishment.

⁶⁰ My emphasis is again on the Ḥanafī authors: Shaybānī, *al-Jāmiʿ al-ṣagħīr*, I, 392; Sarakhsī, *Mabsūt*, XVI, 145; Kāsānī, *Badāʾir*, VI, 289; Marghinānī, *Hidāya*, III, 132; Ūshī al-Farghānī, *Fatāwā*, 481; Ibn al-Humām, *Fath al-qadīr*, VII, 476–7; Zaylaʿī, *Tabayīn al-ḥaqāʾiq*, IV, 241–2; Ibn Nujaym, *Bahr*, VII, 126–7; ‘Abd al-Raḥmān b. Muḥammad Shaykhzāda, *Majmaʿ al-anhur* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1419/1998), III, 305; Ibn ‘Abidīn, *Hāshiya*, VII, 237–8. For the Ḥanbalīs, I have used: Ibn al-Mufliḥ, *al-Nukat wa-l-fawāʾid al-sunniyya* (2nd ed., Riyadh: Maktabat al-Maʿārif, 1410/[1988–9]), II, 355; Taqī al-Dīn Aḥmad b. ‘Abd al-Ḥalīm Ibn Taymiyya, *Fatāwa* (Riyadh: Maṭabīʿ al-Riyād, 1383/[1963–4]), XXVIII, 120. For the Shāfiʿīs, I have used: Shāfiʿī, *Umm*, VII, 127; Māwardī, *al-Aḥkām al-sulṭāniyya*, 239; Nawawī, *Rawḍat al-ṭālibīn*, XI, 144. For the Malīkīs, I have used: Qarāfi, *Dhakhīra*, X, 229; Aḥmad b. Ghunaym al-Nafrāwī, *al-Fawākih al-dīwānī* (Beirut: Dār al-Fikr, 1415/2000), II, 213 (*tashhūr* for the wine-drinker); Muḥammad b. Aḥmad ‘Ulaysh, *Sharḥ minah al-jalīl ‘alā Mukhtaṣar al-ʿallāma al-Khalīl* (Beirut: Dār al-Fikr, 1989), VII, 152. See also al-Jarsifī’s (d. after seventh/thirteenth c.) Malīkī *ḥisba* manual paraphrased by G. M. Wickens, “Al-Jarsifī on the *ḥisba*,” *Islamic Quarterly* 3 (1956–7), 187. See further Wizārat al-Awqāf bi-l-Kuwayt (ed.), *al-Mawsūʿa al-fiqhiyya* (Kuwait: Wizārat al-Awqāf wa-l-Shuʿūn al-Dīniyya, 1983–), s.v. *tashhūr*. As for the office of professional witnesses, according to Mez, *Renaissance*, 228, in the fourth/tenth century, witnesses in the *qāḍī* court were transformed from a group of honorable trustworthy men into a permanent body of officials, the “resurrected notaries of the pre-Islamic empire.” This development, however, was finalized already by the late third/ninth century. See Johansen, “Wahrheit und Geltungsanspruch,” 1006.

⁶¹ Schacht, *Introduction*, 187. Tyan, *Histoire*, 286, 650, mentions parading of false witnesses in passing.

⁶² See Farhat J. Ziadeh, “Integrity (*ʿAdālah*) in Classical Islamic Law,” in Nicholas Heer (ed.), *Islamic Law and Jurisprudence: Studies in Honor of Farhat J. Ziadeh* (Seattle: University of Washington Press, 1990), 73–93, for an appraisal of the critical social role played by professional witnesses (*ʿudūl shuhūd*) in medieval Islamic society.

⁶³ Kāsānī, *Badāʾir*, VI, 289.

medieval Islamic punitive practice. Third, against Schacht's contention, the chronicles show that "making someone public" in medieval Islam was not "merely" a harmless chastisement. On the contrary: Ibn Nujaym stated that *tashhīr* could in fact be harder on the condemned than a simple beating, the usual *ta'zīr* punishment.⁶⁴ In other words, the condemned may have considered himself lucky to get away with beating and imprisonment, and being spared the (sometimes life-threatening) public parade. Finally, beating and imprisonment for false witness were not recommended by "some authorities only," as I shall have occasion to show. Perhaps Schacht was influenced in his assessment by the fact that *tashhīr* took sometime to be recognized by the Muslim jurists as a form of *ta'zīr* and never quite lost its ambiguous character as a non-*ta'zīr* punishment. It should also be noted that Schacht proposed to lay out the grand lines of Islamic legal theory, not to investigate phenomena such as *tashhīr*, which arguably border on the folkloric, if not the extralegal. However, in light of the rich material about *tashhīr* in the historical and eschatological, as well as legal, literature, Schacht's statement needs review.

For the practice of *tashhīr*, the jurists referred back to the second caliph 'Umar b. al-Khaṭṭāb and to Shurayḥ b. al-Hārith, judge in Kūfa from around 650 to 700 CE, who came to embody the ideal judge in the eyes of later generations.⁶⁵ Sarakhsī relates from Shurayḥ that

if he apprehended a false witness he used to send him to the people of the market if he was a merchant, or to his own people if he was not, after the afternoon prayer, in the presence of as many people as possible [*ajma'a mā kānū*]. Then Shurayḥ would say: "Look, we have found this person to be a false witness. Beware of him!" Then people would guard themselves against him.⁶⁶

Two of the earliest *ḥadīth* collections, the *Muṣannaḥ* of 'Abd al-Razzāq al-Ṣan'ānī (d. 211/827) and the *Muṣannaḥ* of Ibn Abī Shayba (d. 235/849)

⁶⁴ Ibn Nujaym, *Baḥr*, VII, 127. According to the eighteenth-century Ottoman historian Ṣam'dānizāde, *tashhīr*, "though it is not capital punishment, is worse than capital punishment." See Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973), 301.

⁶⁵ On Shurayḥ, see Wakī, *Akhbār al-quḍāt*, II, 189–381. See also Khaleelul Iqbal Mohammed, "Development of an Archetype: Studies in the Shurayḥ Traditions" (Ph.D. dissertation, McGill University, 2001); *EI2*, s.v. *Shurayḥ b. al-Hārith*, IX, 508b–509b (E. Kohlberg); Schneider, *Das Bild des Richters*, 39, 46, 70, 74, 82, 132; Hallaq, *The Origins and Evolution of Islamic Law*, 37, 40–1, 45, 53. The practice of "making public" as punishment, however, is likely to be much older. Manfred Kropp has argued that the group of ancient South Arabian inscriptions known as "expiation texts" were not primarily religious, but juridical documents used in public confessions of offenses. See his "Individual Public Confessions and Pious *ex voto*, or Stereotypical and Stylized Trial Document and Stigmatizing Tablet for the Pillory? The Expiation Texts in Ancient South Arabian," *Proceedings of the Seminar for Arabian Studies* 32 (2002), 203–8. A similar public confession appears to be contained in a Thamūdic expiation inscription at Madaba Jordan. See Fawāz Hamad al-Kharisha, "Kitāba 'arabiyya bi-l-khaṭṭ al-thamūdī min al-Urdun," *Adumatu* 2 (2000), 59–70. I owe these references to Manfred Kropp.

⁶⁶ Sarakhsī, *Mabsūṭ*, XVI, 145; see also Marghinānī, *Hidāya*, III, 132; Zayla'ī, *Tabyīn al-ḥaqā'iq*, IV, 241–2.

attest to the antiquity of the tradition.⁶⁷ Both add that Shurayḥ used to take off the turban of a false witness and beat him on the head with a whip (*khafaqahu bi-l-dirra khafaqāt*),⁶⁸ while making him stand on a platform or an elevated place (*makān murtafī*).⁶⁹ As for the caliph ‘Umar, Ṣan‘ānī and Ibn Abī Shayba report that he had anyone who bore false witness flogged with up to seventy lashes with the whip, and that “he made him stand at nightfall in a loincloth [*aqāma shāhid al-zūr ‘ashiyyatan fī izārīn*] so that he would embarrass himself [*yunakittu nafsahu*].”⁷⁰ Ṣan‘ānī adds that ‘Umar ordered that the face of false witnesses be blackened and their turbans tied around their necks, after which they were to be paraded through the various tribal quarters of the city (*an yuṭāfu bihi fī l-qabā’il*) and their crimes called out to the public.⁷¹ Ṣan‘ānī even reports a tradition according to which ‘Umar went so far as to mutilate (*maththala*) a false witness.⁷²

The stories from Ṣan‘ānī and Ibn Abī Shayba contain many of the elements of *tashhīr* with which we are already familiar. In many respects, they echo the information gathered from the historiography and courtly literature of the Saljūq period, as well as from the eschatological tradition. Let us add, then, the legal literature on the subject in order to explore further the cultural significance of *tashhīr*.

Ritual parading on animals

One of the most commonly encountered terms denoting punitive parade is *ṭīfa/yuṭāfu bihi*, “he was/is ritually paraded.” The practice of ritual circumambulation (*ṭawāf*) in Islam originated in pre-Islamic times. The *ṭawāf* of the Ka‘ba in Mecca is only the most well-known example. Both active and passive circumambulation of the Ka‘ba were common. The Prophet himself, when approaching death, was carried around the Ka‘ba (*ṭīfa bihi*) amidst his wives, whence the legal permissibility of letting oneself be carried during the *ḥajj* if too sick to walk.⁷³ Other pre-Islamic *ṭawāf* ceremonies, however, were rejected in the formative age of Islam. The announcement (*na‘y*) of the death of a person, which included a funerary parade of the corpse in the

⁶⁷ Ṣan‘ānī, *Muṣannaf*, VIII, 326; Ibn Abī Shayba, *Muṣannaf*, IV, 550. See also the reports that do not mention Shurayḥ in Ibn Abī Shayba, *Muṣannaf*, IV, 550, V, 532, which appear to make it possible that Shurayḥ was added on to the tradition at a later stage, following the dynamics in the development of *ḥadīth* literature that Schacht described as the “growing backwards” of *isnāds*. Mohammed, “Development of an Archetype,” 128, in his discussion of the Shurayḥ traditions regarding the punishment for false testimony, points out that, “as in all matters of *ikhtilāf* and search for precedent, the name of Shurayḥ was an important tool.”

⁶⁸ Ṣan‘ānī, *Muṣannaf*, VIII, 326; Ibn Abī Shayba, *Muṣannaf*, IV, 550.

⁶⁹ Ṣan‘ānī, *Muṣannaf*, VIII, 326. ⁷⁰ *Ibid.*, VIII, 325; Ibn Abī Shayba, *Muṣannaf*, IV, 550.

⁷¹ Ṣan‘ānī, *Muṣannaf*, VIII, 327.

⁷² *Ibid.* The term *tamthīl* (“mutilation”) here could refer to blackening the face and shaving beard and hair. The traditions about Shurayḥ are conveniently collected together by Zayla‘ī, *Naṣb al-rāya*, IV, 88.

⁷³ Kāsānī, *Badā‘ī*, II, 161.

houses (*majālis*) of the quarter, was condemned by the early authorities as a heathen (*jāhili*) custom.⁷⁴

As for parading criminals, a (possibly tendentious) *ḥadīth* tells the story of the Jews of Yathrib who ignominiously paraded a fornicator from among their community, passing before the eyes of the Prophet. According to this tradition, the Prophet intervened to remind the Jews of the punishment that the Torah had prescribed, that is, stoning.⁷⁵ Note that the *ḥadīth* does not polemicize against public parading as such, but rather against implementing it as a measure against fornication. A more general critique is perhaps discernible in another tradition. When a son of Saʿīd b. al-Musayyab (d. 94/712 or 105/723)⁷⁶ was flogged for drinking wine and then paraded, Saʿīd said: “I have no complaints that he is beaten, but I do have grudges that he is paraded, for this is something that Muslims have not done [before].”⁷⁷ Reticence vis-à-vis punitive parading as a heathen, non-Islamic practice perhaps reverberates in this tradition.

No such reservations against the practice can be found in the writings of Muslim jurists, at least among the Ḥanafīs, Mālikīs, and Ḥanbalīs. Shāfiʿī spoke only of exposure (*waqfuhu*) in the mosque or market, not of showing the criminal around in a parade. Perhaps this explains the near silence of later Shāfiʿī authors about *tashhīr*.⁷⁸ As for the other three Sunnī schools, the traditions from ʿUmar and Shurayḥ were embraced without ado. If anything, the *ṭawāf* developed from a locally circumscribed practice (in the condemned’s own milieu, that is, his own neighbourhood or the marketplace) to a procession that could lead the victim through the whole city. Abū Ḥanīfa and with him the classical jurists followed Shurayḥ in recommending that an offender be paraded in the markets, mosques, and residential quarters.⁷⁹ Postclassical authors added some details. The Mālikī Qarāfi speaks of parading the false witness in the Friday mosque,⁸⁰ and Ibn ʿAbidīn mentions that the parade went through the city (*balad*) and every quarter (*maḥalla*), led by the helpers (*aʿwān*) of the judge.⁸¹

As for making the condemned ride on a quadruped, as mentioned a *ḥadīth* attributes to the Jews of Medina the practice of parading fornicators on a

⁷⁴ Saṅʿānī, *Muṣannaf*, III, 390.

⁷⁵ Abū Dāwūd, *Sunan*, IV, 154; Ṭaḥāwī, *Sharḥ maʿānī al-āthār*, IV, 142; Ṭaḥāwī, *Sharḥ mushkil al-āthār*, XI, 440; Naḥḥās, *Maʿānī l-Qurʾān*, II, 311. A commentary on this *ḥadīth* can be found in ʿAzīmābādī, *ʿAwn al-maʿbūd*, XII, 87.

⁷⁶ Abū Muḥammad Saʿīd b. al-Musayyab b. Ḥuzn al-Qurashī, son-in-law of Abū Hurayra, was a highly respected *ḥadīth* transmitter and jurist among the *tābīʿūn* in Medina. See Ibn Saʿd, *Ṭabaqāt*, II, 379; Ibn Ḥajar al-ʿAsqalānī, *Tahdhīb al-tahdhīb*, IV, 74–7; Shīrāzī, *Ṭabaqāt al-fuqahāʾ*, 58. See also Motzki, “The Role of Non-Arab Converts in Early Islamic Law,” 300.

⁷⁷ Ibn Abī Shayba, *Muṣannaf*, V, 558. It is possible, however, to read the tradition not as a general critique of *tashhīr*, but one only in as much as it is used as a punishment for the consumption of wine.

⁷⁸ Shāfiʿī, *Umm*, VII, 127. ⁷⁹ *Ibid.* ⁸⁰ Qarāfi, *Dhakhira*, X, 229.

⁸¹ Ibn ʿAbidīn, *Hāshiya*, VII, 238.

donkey, facing backwards.⁸² ‘Umar was reported to have put someone on a beast (*atā bi-rajulīn waqa’a alā bahīma*). According to the commentator Ibn Ḥajar (d. 852/1449), “this was a false witness, as is [also] reported from Shurayḥ.”⁸³ The caliph ‘Umar b. ‘Abd al-‘Azīz is also said to have paraded people on animals.⁸⁴ The historical sources relate that people were paraded on donkeys, cows, oxen, camels, and elephants. However, the jurists, with a few exceptions, are silent on the issue. Ibn Taymiyya claimed that the condemned had to be seated on an animal, facing backwards.⁸⁵ Under the Mamlūks, cows appear to have been commonly used for this purpose,⁸⁶ and the Damascene Ibn ‘Ābidīn (d. 1835 CE) repeats this statement, adding that donkeys were used in the provinces (*fī diyārīnā*).⁸⁷

Blackening of the face (taswīd al-wajh)

The human face in medieval Islamic culture was the symbol of honor, happiness, and beauty.⁸⁸ “To blacken the face of someone [*sawwada wajhahu*]” is a common Arabic idiom to denote the notion of inflicting shame.⁸⁹ Closely connected is the idea of the “water of the face [*mā’ al-wajh*],” an idiom that expresses honor.⁹⁰ Sarakhshī argued that *tashhūr* was a *ta’zīr* punishment that befitted the crime of the false witness, for a witness in court, by virtue of his testimony, acquires “water of the face,” while in *tashhūr* “the ‘water of the face’ is taken away from him [the false witness] in the eyes of the people [*yadhhabu bi-mā’ al-wajh ‘inda l-nās*].”⁹¹

“To blacken the face of someone” was not an expression that was merely figurative. Those who did in fact have black faces (for example, because of a disease) were quick to be stigmatized as liars, or, for that matter, as false witnesses.⁹² Sa’īd b. al-Musayyab was reported to have said about a man who

⁸² Abū Dāwūd, *Sunan*, IV, 155. This did not stop later authorities from parading sexual offenders. See Ibn al-Jawzī, *Munṭaẓam*, XVI, 166, XVII, 73 (immodest *ḥammām* visitors).

⁸³ Ibn Ḥajar al-‘Asqalānī, *al-Īthār bi-ma’rifat ruwāt al-āthār* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1413/1993), I, 220.

⁸⁴ Ibn Sa’d, *Ṭabaqāt*, V, 365. ⁸⁵ Ibn Taymiyya, *Fatāwa*, XXVIII, 120.

⁸⁶ Ibn Nujaym, *Baḥr*, VII, 127.

⁸⁷ Ibn ‘Ābidīn, *Ḥashīya*, VII, 238. In medieval Europe, processions of public disgrace also often involved donkeys (Germ. *Schandesel*). See Dürr, *Nacktheit und Scham*, 280.

⁸⁸ See Zamakhsharī, *Kashshāf*, II, 531: “The face is the most important part of the outer body, and its most noble one [*al-wajh a’azzu mawḍū’ in fī zāhīr al-badan wa-ashrafuhū*].” Characteriological physiognomy (*‘ilm al-firāsa*) in the tradition of Antonius Polemon (Aflimūn, c. 88–144 CE) lived on in Islam in works such as Fakhr al-Dīn al-Rāzī’s *Risāla fī ‘ilm al-firāsa* (Paris: Geuthner, 1939). See 58–9: “The physiological significance of the face is greater than of any other member . . . Bodily perfection depends on the beauty of the face . . . The seat [*maḥall*] of beauty and ugliness is nothing other than the face, and the other members do not possess beauty and ugliness to the same degree.” Cf. *EI2*, s.v. *Firāsa*, II, 916a–917a (T. Fahd).

⁸⁹ Rāzī, *Tafsīr*, VIII, 148–9.

⁹⁰ Abū Manṣūr ‘Abd al-Malik al-Tha’ālibī, *Thimār al-qulūb fī l-muḍāf wa-l-mansūb* (Cairo: Dār Nahḍat Miṣr, 1384/1965), 563, 559.

⁹¹ Sarakhshī, *Mabsūt*, XVI, 145.

⁹² For black skin blemishes, or moles, see *EI2*, s.v. *Shāma*, IX, 281a–b (T. Fahd).

suffered from an ulcer (*qarḥa*) on his face: “He insulted ‘Alī, ‘Uthmān, Ṭalḥa, and al-Zubayr and, since he is a liar, God blackened his face.”⁹³ No wonder that, as the proverb asserts, “all those with a blackened face claim to be blacksmiths [*kullu man suwwida wajhuhu qāla anā ḥaddād*]”:⁹⁴ It was better to be regarded as a blacksmith by profession than as someone who had lost his “water of the face.”⁹⁵ It appears that such notions could also facilitate color prejudice.⁹⁶ Tha‘alibī (d. 961/1038) relates the story of a white harem slave who insults a black slave: “The men of God have white faces, and black are the faces of the inhabitants of hell!”⁹⁷ It should be pointed out, however, that egalitarian views of race had strong supporters in Islam, including such prominent thinkers as Jāḥiẓ (d. 255/869) and others who argued that the black skin of Africans was the result exclusively of natural causes.⁹⁸

The jurists of Islam were very cognizant of the fact that the human face was a body part that possessed special value and therefore deserved special protection. According to most authors, only three parts of the body were exempt from beating in the divinely ordained punishments: the face, the head,

⁹³ Ibn ‘Asākīr, *Tārīkh madīnat Dimashq*, IXL, 511. The tradition is found already, if in a shorter version, in Aḥmad b. Muḥammad Ibn Ḥanbal, *Faḍā’il al-ṣaḥāba* (Beirut: Mu’assasat al-Risāla, 1403/1983), II, 908; Abū l-Qāsim Hibat Allāh b. al-Ḥasan al-Lālākā’ī, *Ṭiḡād ahl al-sunna wa-l-jamā’a* (Riyadh: Dār Tiba, 1402/[1981–2]), VII, 1257. Cf. the notion that “fever flows from hell [*al-ḥunnā min fayḥ jahannum*]”: Daylamī, *Firdaws al-akbār* (ed. Zaghlūl), II, 156.

⁹⁴ Maydanī, *Majma’ al-amthāl* (ed. ‘Abd al-Ḥamid), II, 257.

⁹⁵ Note, however, that blacksmiths traditionally had a bad reputation in medieval Islamic culture. For bedouin origins of the low reputation of blacksmiths, and for examples from early Arabic poetry, see Ignaz Goldziher, “Die Handwerke bei den Arabern,” *Globus* 46 (1894), 203–5 (repr. and tr. as “The Crafts Among the Arabs,” in Michael G. Morony [ed.], *Manufacturing and Labour* [Aldershot: Ashgate, 2003], 145–50); *EI2*, s.v. Ḳayn, IV, 819a (J. Chelhod). “Son of a blacksmith” was still a current insult in Almoravid times. See Serrano, “Twelve Court Cases,” 486. Writing under the Saljūqs, Sanā’ī, *Ḥadiqat al-ḥadiqa*, 650, contrasts the low and vile blacksmith with the well-spoken and musk-scented drug-dealer (*attār*). For attempts to rehabilitate the profession of the blacksmith (Abū Ṭalīb al-Makkī, Ghazālī), see Brunschvig, “Métiers vils en Islam,” *SI* 16 (1962), 45–6. See also Axel Havemann, “Soziale Hierarchie und Gleichheit: zur Stellung der Berufe im mittelalterlichen Islam,” *Der Islam* 82, 2 (2005), 256–72.

⁹⁶ The biblical story of Ham, who had seen the sleeping Noah’s genitals but had not covered them, and therefore was cursed by his father (Genesis 9:18–27), is repeated in many places in the Islamic literature. Kisā’ī (fl. fifth/eleventh c.), in his *Tales of the Prophets*, relates Noah’s curse: “May God change your complexion and may your face turn black! . . . May God make bondswomen and slaves of Ham’s progeny until the Day of Resurrection!” See Muḥammad b. ‘Abd Allāh al-Kisā’ī, *Qīṣaṣ al-anbiyā’* (translated by Wheeler Thackston, Boston: Twayne Publishers, 1978), 105. For other references to this story, see Gernot Rotter, “Die Stellung des Negers in der islamisch-arabischen Gesellschaft bis zum XVI. Jahrhundert” (Ph.D. dissertation, University of Bonn, 1967), 145–52. Note that the issue here seems to be Ham’s “shaming” of his father; as a punishment he is “shamed” with a blackened face. Bright skin was also valued simply for esthetic reasons. See the chapter in anon., *Baḥr al-fawā’id* (tr. Meisami), 206, on the “Use of a Remedy That Clears the Complexion and Makes It Bright as Ivory.” Bernard Lewis, *Race and Color in Islam* (New York: Harper & Row, 1970), 102, speaks of the “myth of Muslim freedom of racial prejudice.”

⁹⁷ Quoted in Rotter, “Die Stellung des Negers,” 167.

⁹⁸ See *ibid.*, 150, 164, who refers to Tha‘alibī, *Laṭā’if*, 112.

and the private parts.⁹⁹ If, on the other hand, facial injuries were incurred, the jurists went to some length to make sure the damage was repaired. While a plethora of Prophetic traditions warned men against wearing gold,¹⁰⁰ some jurists allowed the use of golden prostheses to replace amputated noses.¹⁰¹ The Ḥanbalī Ibn Qudāma (d. 620/1223) wrote about the financial compensation (*diyya*) incumbent for facial injuries. According to classical doctrine, full *diyya* is due only for homicide and for the total loss of an organ or a physiological or intellectual function, such as, for example, loss of the nose or both eyes.¹⁰² Remarkably, Ibn Qudāma likens the blackening of faces to cutting off the nose or both ears, that is, as an injury for which full *diyya* can be claimed.¹⁰³ For Ibn Qudāma, to “blacken someone’s face” was no less than to destroy a most vital function of the human organism.

Given such views about the human face in the broader cultural and legal context, it is not surprising that the jurists paid special attention to the issue of blackening the face of those paraded in *tashhīr* processions. The Ḥanafīs and Mālikīs discussed the question whether blackening of the face constituted

⁹⁹ These body parts are called *maqātil*, “body parts which, if injured, bring about death.” See Shaybānī, *al-Jāmiʿ al-ṣaḡhīr*, I, 287; Marghinānī, *Hidāya*, II, 97; Ibn al-Humām, *Fath al-qadīr*, V, 231; Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, III, 170; Ibn Nujaʾim, *Baḥr*, V, 10. This view was based on a Prophetic injunction to protect the *maqātil*: Ibn Abī Shayba, *Muṣannaf*, V, 529; Zaylaʿī, *Naṣb al-rāya*, III, 324; Ibn Ḥajar al-ʿAsqalānī, *Talkhīṣ al-ḥabīr*, IV, 78; Qārī, *Mirqāt al-mafātiḥ*, VII, 118. Cf. the tradition “Punish according to the crime, but spare the face [*ʿāqib bi-qadr l-dhanb wa-ttaqī l-wajh!*]” See Tabarānī, *al-Muʿjam al-kabīr*, II, 269; Haythamī, *Majmaʿ al-zawāʾid*, VIII, 106; Muttaqī, *Kanz al-ummāl*, IX, 31, 36, 86. This tradition appears to be related to another, widespread in the time of Ghazālī, according to which the Prophet Muḥammad told a man who was beating his servant on the face not to do so, “for God created Adam in his [or its, i.e., the face’s] form.” See William Montgomery Watt, “Created in His Image: A Study in Islamic Theology,” *Transactions of the Glasgow University Oriental Society* 18 (1959–60), 41.

¹⁰⁰ On declaring gold and silver forbidden “for the males of my community,” see Ibn Ḥanbal, *Musnad*, I, 115, IV, 392; Nasāʾī, *Sunan*, V, 436; Abū Dāwūd, *Sunan*, IV, 50; Ibn Māja, *Sunan*, II, 1189. For traditions against wearing golden clothes, see Ibn Ḥanbal, *Musnad*, II, 166, 208, IV, 92, 96–101. For forbidding men to wear golden rings, see Ibn Ḥanbal, *Musnad*, I, 81, 92, II, 468, passim; Bukhārī, *Ṣaḥīḥ*, I, 417, V, 1984, 2202; Muslim, *Ṣaḥīḥ*, III, 1636, 1654. The anonymous author of the mirror for princes entitled *Baḥr al-fawāʾid* (tr. Meisami), 144, states that “men are not objects of desire, so it [i.e., gold, brocade, and silver] is unlawful for them; but they are lawful for women so as to increase their beauty.”

¹⁰¹ Sarakhṣī, *Sharḥ al-Siyar al-kabīr* (translated by M. Hamidullah; Ankara: Türkiye Diyanet Vakfı, 1989–91), I, 89. Sarakhṣī himself, however, rejected this opinion. Abū Yūsuf and Shaybānī are reported to have allowed the practice. See Marghinānī, *Hidāya* (tr. Hamilton), 598.

¹⁰² Peters, *Crime and Punishment*, 52.

¹⁰³ Ibn Qudāma, *al-Kāfī fi fiqh al-Imām Aḥmad Ibn Ḥanbal* (Beirut: al-Maktab al-Islāmī, [1964]), IV, 93; Ibn Qudāma, *al-Mughnī*, VIII, 379. Full *diyya* is also claimed for flaying the skin of the face (*salkh jild al-wajh*) (Ibn Nujaʾim, *Baḥr*, VIII, 335; Ḥaskafī, *Durr*, VI, 583; Ibn ʿAbidin, *Hāshiya*, VI, 583): “Because it destroys proper appearance [*jamāl*] completely [*tafwūʿ al-jamāl ʿalā l-kamāl*].” Cf. the notion that if the owner of a slave “disfigures his slave [*shāna ʿabdahu*] or mutilates him by amputating the nose, an ear, or another extremity [*jarīḥa*], he must manumit him.” See ʿAynī, *ʿUmdat al-qārī*, XXI, 139. The Ḥanbalī Ibn Muflīḥ, *al-Mubdīʿ fi sharḥ al-Muqṣṣ*, VIII, 371, 388, also discusses the partial compensation incumbent upon blackening a finger and blackening hair.

mutilation (*muthla*) or not.¹⁰⁴ Mutilation was forbidden by a Prophetic *ḥadīth*,¹⁰⁵ and some jurists took this interdiction to extend “even to the biting dog [*al-kalb al-‘aqūr*],”¹⁰⁶ the only category of animals one was allowed to kill within the holy precinct (*ḥaram*) of Mecca.¹⁰⁷ The Mālikī Khalīl b. Iṣḥāq (d. 776/1374), refused to acknowledge blackening of the face in *tashhīr*.¹⁰⁸ Māwardī mentions that the majority of Shāfi‘īs in his time had come to accept the practice.¹⁰⁹ It is the Ḥanafīs, however, who discuss the issue with the most attention to detail.

The classical Ḥanafī authors condemned blackening of the face as mutilation. To give an example, Sarakhsī, following Abū Ḥanīfa, prohibits using earth (*ḥīm*) for ritual ablution in the absence of water, “because this is to stain the face [*talwīth al-wajh*], and that is mutilation.”¹¹⁰ As for blackening the face in *tashhīr*, however, he allows for it as an act of *siyāsa*, that is, punishment for reasons of state expediency, as supposedly ‘Umar had done with the false witness.¹¹¹ However, according to another tradition, ‘Umar had forbidden the practice of blackening the face on a different occasion.¹¹² Sarakhsī concludes that blackening of faces is allowed only in extreme circumstances, especially when interests of the public good were at stake. According to yet

¹⁰⁴ I do not know what the Ḥanbalīs and Shāfi‘īs thought in this regard. Both appear to have simply followed ‘Umar b. al-Khaṭṭāb’s example and accepted the practice. See Qarāfī, *Dhakhīra*, X, 229; Ibn Taymiyya, *Fatāwā*, XXVIII, 120.

¹⁰⁵ Ibn Abī Shayba, *Muṣannaḥ*, III, 92, V, 455; Ṣan‘ānī, *Muṣannaḥ*, VIII, 436; Ibn Ḥanbal, *Musnad*, IV, 246, 428–9, 432, 436, 439–40, 440, V, 12, 20; Bukhārī, *Ṣaḥīḥ*, IV, 1535; Nasā‘ī, *Sunan*, II, 299; Abū Dāwūd, *Sunan*, III, 53; Tirmidhī, *Sunan*, IV, 22. The Prophet is reported to have mutilated a couple of ‘Urayna, but to have abrogated the practice thereafter. See Bukhārī, *Ṣaḥīḥ*, IV, 1535; Tabarī, *Jāmi‘ al-bayān* (ed. Shākir), V, 246–54 (as a commentary on Qur‘ān 5:33); Sarakhsī, *Mabsūṭ*, X, 5; Marghinānī, *Hidāya*, II, 137.

¹⁰⁶ Sarakhsī, *Mabsūṭ*, XVI, 145; Zayla‘ī, *Tabyīn al-ḥaqā‘iq*, IV, 242. The aversion of Muslim jurists to mutilation also prevailed in the West. See Mediano, “Justice, crime et châtement au Maroc au 16e siècle,” 617.

¹⁰⁷ Sarakhsī, *Mabsūṭ*, IV, 90, IX, 135, 196, X, 29, passim; Marghinānī, *Hidāya*, I, 172. Mālik b. Anas defined *al-kalb al-‘aqūr* as every animal that bites and intimidates people, that is, snakes, wolves, etc.: *Muwatta‘a*, I, 357. On the interdiction against mutilating animals in general, see Bukhārī, *Ṣaḥīḥ*, V, 2100; Ibn Māja, *Sunan*, II, 1063; Sarakhsī, *Mabsūṭ*, X, 29.

¹⁰⁸ ‘Ulaysh, *Sharḥ Mukhtaṣar Khalīl*, VII, 152. However, the late medieval Andalusian Mālikite al-Jarsifi, author of a handbook for the *muḥtasib*, states that the majority of scholars allow the blackening of the face. See Wickens, “Al-Jarsifi on the *Ḥisba*,” 187.

¹⁰⁹ Māwardī, *al-Aḥkām al-sulṭāniyya*, 239.

¹¹⁰ Sarakhsī, *Mabsūṭ*, I, 115. Kāsānī, *Badā‘ī*, I, 46, stated that blackening the face with dust (*turāb*) for ablution was dangerous because “it resembles mutilation.” Cf. *ibid.*, I, 54: “It is similar to mutilation and the sign of the denizens of hell.” The schools allow for ritual ablution with fine sand or topsoil, a practice known as *tayammum*. See Kevin Reinhart, “Impurity/No Danger,” *History of Religions*, 30, 1 (1990), 4, 17.

¹¹¹ Sarakhsī, *Mabsūṭ*, XVI, 145; Marghinānī, *Hidāya*, III, 132; also Zayla‘ī, *Tabyīn al-ḥaqā‘iq*, IV, 241.

¹¹² Ibn al-Humām, *Fatḥ al-qadīr*, VII, 477, and Ibn Nujaʿm, *Rasā‘il*, 117, both referring to the tradition preserved in Bayhaqī, *al-Sunan al-sughrā* (Riyadh: Maktabat al-Rushd, 1422/2001), IX, 167; Bayhaqī, *al-Sunan al-kubrā*, X, 214. However, the story refers to *tashhīr* for drinking wine, not for false testimony. Cf. Sa‘īd b. al-Musayyab’s critique of *tashhīr* of a wine-drinker (his own son) in Ibn Abī Shayba, *Muṣannaḥ*, V, 558.

another tradition, ‘Umar punished a false witness with forty lashes with the whip, which is more than the maximum amount of *ta‘zīr*.¹¹³ Sarakhṣī infers from this that false testimony is in fact a crime that calls for a *siyāsa* punishment. Blackening of the face is, as Sarakhṣī puts it, a measure taken by the leader of the Muslim community (*imām*) “if he knows that he [the condemned] will not be deterred unless he is punished with it.”¹¹⁴ Postclassical Ḥanafīs took Sarakhṣī’s concession to historical practice a step further. While a few voiced a measure of dissent, or even rejected blackening of the face altogether,¹¹⁵ most argued that it did not constitute mutilation, because, as Ibn al-Humām (d. 681/1459) argued, “mutilation is realized only in cutting off limbs and similar things that are done to the body and which persist in their effect, not in a body part that can be washed and then it [the injury] disappears.”¹¹⁶ From classical to postclassical times, then, Ḥanafī jurists were increasingly willing to accept the blackening of faces in *tashhīr*.

Stripping of clothes (tajrīd al-thiyāb) and special signs

The Islamic concern to veil one’s legal nakedness (*ṣatr al-‘awra*) carried over into penal law. While the zone of shame of the free man covers the part between the navel and the knees,¹¹⁷ free women’s *‘awra* extends to the whole body except face and hands (and, according to others, feet and forearms).¹¹⁸ In the divinely ordained punishments, following a tradition from the caliph ‘Alī, the condemned was to be stripped of his clothes. However, he kept his loincloth (*izār*) on, or, according to the Ḥanbalīs, a shirt (*qamīṣ*).¹¹⁹ In *ta‘zīr*, most were of the opinion that clothes were kept on.¹²⁰ As for *tashhīr*, it was

¹¹³ Ibn Nujaʿm, *Rasāʾil*, 117. ¹¹⁴ Sarakhṣī, *Mabsūṭ*, XVI, 145.

¹¹⁵ Ibn ‘Abidīn, *Ḥaṣhiya*, VII, 238, cites the Transoxanian Ḥanafī jurist Shams al-Dīn Muḥammad al-Quhistānī (d. 962/1555) as a witness for this position. In addition, the author of an eighth-/fourteenth-century *ḥisba* manual from India rejects the opinion found in Jaṣṣāṣ’s *Adab al-qāḍī*, that the face of the perjurer should be blackened. See Sunāmī, *Niṣāb al-iḥtisāb*, 29, referring to chapter 49 of Jaṣṣāṣ’s *Adab al-qāḍī*. Sunāmī also refers to Shaybānī’s *al-Jāmi‘ al-ṣaḡhīr* as an instance of arguing against the blackening of faces.

¹¹⁶ Ibn al-Humām, *Fath al-qadīr*, VII, 477: “qaṭ‘ al-a-‘dā’ wa-naḥwahu mim mā yuḥālu fī l-badan wa-yazūlu lā bi-i’tibār ‘araḍin yughṣalu fa-yazūlu.” A warped version of Ibn al-Humām’s statement is found in Ibn Nujaʿm, *Rasāʾil*, 117.

¹¹⁷ Sarakhṣī, *Mabsūṭ*, X, 146–7; Marghinānī, *Bidāyat al-mubtadī* (Cairo: Maktabat wa-Maṭba‘at Muḥammad ‘Alī Ṣubḥ, n.d.), I, 13; Qāḍikhān, *Fatāwa*, III, 407–8. See further Johansen, “The Valorization of the Human Body in Muslim Sunnī Law,” in Devin Stewart, Baber Johansen, and Amy Singer (eds.), *Law and Society in Islam* (Princeton: Markus Wiener Publishers, 1996), 75.

¹¹⁸ Sarakhṣī, *Mabsūṭ*, X, 145, 152–55; Marghinānī, *Bidāyat al-mubtadī*, I, 13. Cf. Johansen, “The Valorization of the Human Body in Muslim Sunnī Law,” 75. As is noted by Alshech, “Do Not Enter Houses Other Than Your Own,” 309 n. 56, the meaning of *‘awra* is largely determined by context. For example, a free woman is allowed, according to some scholars, to show her belly to male relatives whom she cannot legally marry, but must conceal it in front of a stranger.

¹¹⁹ Ibn al-Humām, *Fath al-qadīr*, V, 231; Zayla‘ī, *Naṣb al-rāya*, III, 323; Zayla‘ī, *Tabyīn al-ḥaqā’iq*, III, 170.

¹²⁰ Shaybānī, *al-Jāmi‘ al-ṣaḡhīr*, I, 287; Qāḍikhān, *Fatāwa*, III, 480; Samarqandī, *Tuḥfat al-fuqaḥā’*, III, 143.

related from ‘Umar that he had exposed the false witness in a loincloth (*izār*) to ridicule him, and Shurayḥ had stripped the condemned of his turban,¹²¹ but private parts remained at all times covered.¹²² “It is permissible to strip someone of his clothes and parade him among the people,” writes the Shāfi‘ī Māwardī, “but only to the extent that his ‘*awra* remains veiled.”¹²³

However, standards for preserving one’s ‘*awra* differed according to gender and social rank. Ignominious parades of women are known to have taken place during the Saljūq period.¹²⁴ This must have been perceived as an especially harsh punishment; as a rule, the bodily integrity of women was vehemently defended.¹²⁵ The jurists argued that in the divinely ordained punishments women were to be punished differently. The principle that “*ḥadd* is based on making public [*mabnā l-ḥadd ‘alā l-tashhūr*]” was a generally accepted maxim,¹²⁶ but most emphasized that the necessity to cover the woman’s legal nakedness (‘*awra*) remained untouched.¹²⁷ Also, there was strong condemnation of gibbeting women.¹²⁸ If stoned for fornication, women were to receive the punishment sitting in a trench, not standing like men.¹²⁹

Slave-women, on the other hand, were not under as strict an obligation to cover their ‘*awra* as free women were.¹³⁰ In fact, female slaves were, as Johansen notes, “in everybody’s reach and touch,” their bodies being, as objects of transactions, subjected to the probing look of inspection of potential buyers.¹³¹ Perhaps the fact that slaves’ bodies had already suffered profanation helps to explain why the chronicles report no *tashhūr* punishments of slaves.¹³² Since *tashhūr* was designed to destroy the inviolability (*ḥurma*) and dignity (*karāma*) of the human body, slaves did not meet the

¹²¹ Ṣan‘ānī, *Muṣannaf*, VIII, 325–6; Ibn Abī Shayba, *Muṣannaf*, IV, 550.

¹²² See pp. 79–89. Cf. Dürr, *Nacktheit und Scham*, 267–82. By adducing a plethora of historical examples, Dürr shows that, while public disgrace was a common punishment in medieval Europe, as a rule cultural notions of shame prevented the punishing authorities from revealing the private parts of the condemned, especially of women. Thus, in 1331 in Ceresy, a woman accused of adultery was condemned to walk in the Sunday procession “in tunica, nudies pedibus, incapillata, non cinta.” See *ibid.*, 279.

¹²³ Māwardī, *al-Aḥkām al-sulṭāniyya*, 239.

¹²⁴ Ibn al-Jawzī, *Muntazam*, XVII, 323 (Baghdad, 531/1136–7).

¹²⁵ See Hillenbrand, “Seljuq Women,” 147, for a commentary on Ibn al-Jawzī’s *Aḥkām al-nisā’* (Beirut: al-Maktaba al-‘Aṣriyya, 1981).

¹²⁶ Cf. Qur’ān 5:38, which speaks of “exemplary punishment” (*nikāl*); Qur’ān 24:2 stresses that people should be made to witness flogging for fornication.

¹²⁷ Zayla‘ī, *Tabyīn al-ḥaqā’iq*, III, 171; Ibn al-Humām, *Fath al-qadīr*, V, 234: *mabnā l-ḥadd ‘alā l-tashhūr fī rijāl*. Deterrence (*zajr*) is the underlying aim of Islamic penal regulations, therefore “*ḥadd* penalties must be carried out in public.” See Peters, *Crime and Punishment*, 30. For parallels in medieval Europe, see Dürr, *Nacktheit und Scham*, 275–82.

¹²⁸ Sarakhsī, *Sharḥ al-Siyar al-kabīr* (tr. Hamidullah), III, 521.

¹²⁹ Shāfi‘ī, *Umm*, VII, 154; Marghinānī, *Hidāya*, II, 97; Ibn al-Humām, *Fath al-qadīr*, V, 234; Zayla‘ī, *Tabyīn al-ḥaqā’iq*, III, 171.

¹³⁰ See *EI2*, s.v. ‘Abd, I, 27 (R. Brunshvīg).

¹³¹ Johansen, “The Valorization of the Human Body in Muslim Sunnī Law,” 80.

¹³² To be sure, this is an argument *e silentio*. There is little talk of punishment of slaves in the chronicles in general, whether in private or in public.

standards necessary to be punished in this way. A body with little or no shame could not be shamed.

But even among free male members of the Muslim community, there were different grades of nakedness. If the legal nakedness (*‘awra* in the narrow sense) of the free man could not be touched, facial hair, for example, could. Shaving the head was a punitive practice known from the Companions, and not just in the context of false testimony.¹³³ Shaving the beard, on the other hand, was an act viewed as somewhat akin to mutilation and profanation of the body. Kāsānī states that “shaving the beard is a disgrace and equal to mutilation [*yushayyinuhu wa-yaṣīru bi-ma’nā al-muthla*].”¹³⁴ He explains that shaving the beard

falls in the category of mutilation [*huwa min bāb al-muthla*] because God has embellished men with beards, and women with strands of hair, according to the tradition that God has a number of angels who praise the beauty of men’s beards and women’s hair, and because it [shaving the beard] is similar to what the Christians do; therefore it is condemned.¹³⁵

Even taking off someone’s turban or shoes, or baring the upper body, no doubt could be viewed as an attack on that person’s *‘awra* (in the broad sense).¹³⁶

Another element of *tashhīr* deserves to be mentioned in this context. If on the one hand the victims of *tashhīr* ran the danger of being deprived of some of their garments, on the other hand their bodies were “decorated” with other, usually demeaning pieces of clothing. As discussed earlier, the historical sources speak of special hats (*tarṭūr*), amulets, skins, and shells around the neck, as well as rough garments of wool (*jubbāt ṣūf*).¹³⁷ The jurists are silent on these rather folkloric elements of *tashhīr*. However, in the tradition about ‘Umar’s and Shurayḥ’s tying the turban around the neck of the false witness, one may discern a proto-version of the practice of attaching signs to the paraded.¹³⁸ As examples of *tashhīr* in the chronicles suggest, sometimes these signs were meant to mirror the offense.¹³⁹ This practice survived into Ottoman times and even found its way into the *Qānūn-i ‘Osmānī* promulgated under Süleyman the Magnificent (r. 1520–66), which laid down that someone who had stolen a chicken was to be paraded with the stolen chicken hanging

¹³³ Ibn Abī Shayba, *Muṣannaḥ*, V, 526.

¹³⁴ Kāsānī, *Badā’i*, II, 193. The Mālikīs seem to have allowed shaving of the head but not of the beard. See Wickens, “Al-Jarsīfī on the *Ḥisba*,” 187.

¹³⁵ Kāsānī, *Badā’i*, II, 141. Sarakhṣī, *Mabsūṭ*, IV, 33, likens shaving the beards of men to the shaving of the heads of women, which constitutes mutilation. The Mālikī Khalīl b. Iṣḥāq also opposed the practice of shaving beard and hair of the condemned. See ‘Ulaysh, *Sharḥ Mukhtaṣar Khalīl*, VII, 152.

¹³⁶ Alscheh, “Do Not Enter Houses Other Than Your Own,” 309 n. 56, argues that in legal parlance *‘awra*, in addition to its meaning as the body parts which *must* be concealed, can also designate things that people *wish* to keep out of public reach.

¹³⁷ Cf. pp. 86–7.

¹³⁸ Ṣan‘ānī, *Muṣannaḥ*, VIII, 327; Zayla‘ī, *Naṣb al-rāya*, IV, 88; Ibn Nuḡaym, *Rasā’il*, 117.

¹³⁹ Cf. pp. 170–1.

from his neck.¹⁴⁰ As Peters writes, “[i]n cases of violations of market regulations, an offender was sometimes led around with his faulty goods hanging from his nose, which was first pierced for the purpose, or with his head put through a very heavy wooden board to which a small placard was affixed and on which his defective commodities were placed. A person who has wounded someone is to be led through the streets with an arrow or a knife thrust through his arm.”¹⁴¹

Beating (ḍarb) and announcing the crime (taʿrīf/tasmīʿ)

Abū Ḥanīfa is said to have reasoned that parading was punishment enough for a false witness.¹⁴² Shaybānī and Abū Yūsuf recommended additional beating; in this they relied on what some reported of the caliph ʿUmar.¹⁴³ The classical Ḥanafī jurists tended to follow Abū Ḥanīfa. Sarakhsī spoke out against additional beating, but, again, allowed it as a *siyāsa* measure.¹⁴⁴ Kāsānī reported the consensus (*ijmāʿ*) of the scholars of his time that the false witness was flogged in addition to parading only if he did not repent, a rule which, if followed, must have made flogging in *tashhīr* a rather unlikely occurrence.¹⁴⁵ Marghinānī espoused Abū Ḥanīfa’s view without reservation, arguing that the goal of the punishment – that is, prevention (*zajr*) – was achieved also without the beating, through parading alone.¹⁴⁶ The other three schools of law, on the other hand, had no reservation against beating the false witness and saw “no harm in it.”¹⁴⁷ The postclassical Ḥanafīs by and large agreed with this.¹⁴⁸ Thus, they leaned, as they did with regard to blackening of the face, toward applying a harsher version of the *tashhīr* punishment.

Fīrūzābādī (d. 817/1414–5) says the term *tasmīʿ* (“to make someone hear/make someone be heard about”) is a synonym of *tashhīr*, explaining that *tasmīʿ* is “to do away with secrecy [*khumūl*], through utterance [*dhikr*] and letting [people] hear [*ismāʿ*].” *Tasmīʿ*, Fīrūzābādī states, is in fact the same as

¹⁴⁰ Quoted in Peters, *Crime and Punishment*, 98. ¹⁴¹ *Ibid.*

¹⁴² Sarakhsī, *Mabsūt*, XVI, 145; Kāsānī, *Badāʾiʿ*, VI, 289; Marghinānī, *Hidāya*, III, 132; Ibn al-Humām, *Faḥ al-qadīr*, VII, 475; Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, IV, 241–2; Ibn Nujaym, *Rasāʾil*, 116; Ibn ʿAbidīn, *Hāshiya*, IV, 82, VII, 238. Ibn ʿAbidīn mentions that Khaṣṣāf (d. 261/875) and Sirāj al-Dīn ʿUshī al-Farghānī (d. end of sixth/twelfth c.) followed Abū Ḥanīfa’s opinion.

¹⁴³ Shaybānī, *al-Jamīʿ al-ṣaḡhīr*, I, 392; Sarakhsī, *Mabsūt*, XVI, 145; Kāsānī, *Badāʾiʿ*, VI, 289; Marghinānī, *Hidāya*, III, 132; Ibn al-Humām, *Faḥ al-qadīr*, VII, 475; Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, IV, 241–2; Ibn Nujaym, *Rasāʾil*, 116; Ibn ʿAbidīn, *Hāshiya*, IV, 82, VII, 238.

¹⁴⁴ Sarakhsī, *Mabsūt*, XVI, 145. This view was also embraced by Ibn al-Humām, *Faḥ al-qadīr*, VII, 476–7; Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, IV, 242.

¹⁴⁵ Kāsānī, *Badāʾiʿ*, VI, 289.

¹⁴⁶ Marghinānī, *Hidāya*, III, 132; also ʿUshī al-Farghānī, *Fatāwā*, 481.

¹⁴⁷ Ibn Muflīh, *Nukat*, II, 355. For the Shāfiʿīs, see Shāfiʿī, *Umm*, VII, 127; Nawawī, *Rawḍat al-ʾilābīn*, XI, 144. For the Mālikīs, see Qurāfi, *Dhakhīra*, X, 229.

¹⁴⁸ Ibn Nujaym, *Bahr*, VII, 127; Ibn Nujaym, *Rasāʾil*, 116; Ibn ʿAbidīn, *Hāshiya*, VII, 238, also ascribes this view to Ibn al-Humām.

defaming, or as being defamed (*tashmīr*).¹⁴⁹ This is precisely what happens in the *tashhīr* procession. Ibn ‘Ābidīn judged that, according to the Ḥanafīs, *tasmīr* was the real function (*maʿnā*) of the *tashhīr* punishment of the false witness.¹⁵⁰ Announcing the false witness’s crime to the people appears to have been part of the *tashhīr* punishment from early on. As the *ḥadīth* states, Shurayḥ “made the false witness known to the people [*yuʿarrāfu li-l-nās*],”¹⁵¹ and ‘Umar “pointed him out to the people [*naṣabahu ilā l-nās*].”¹⁵² Sarakhṣī underscores that to publicize (*aʿlana*) the false witness’s unreliability was a right that the Muslims had to be granted.¹⁵³ Kāsānī likewise judged that the false witness is to be announced aloud among the people.¹⁵⁴ His fellow Ḥanafī Ūshī al-Farghānī (late sixth/twelfth c.) gives the formula to be used: “We have found this person to be a false witness!” the herald announces; “Beware of him!”¹⁵⁵ The jurists all embraced the principle that *tasmīr* was a crucial element of *tashhīr*.

In conclusion, the picture that emerges from the writings of Muslim jurists regarding the practice of *tashhīr* is mixed. The Ḥanafīs, especially those of the classical period, acknowledged the practice but tried to impose certain restrictions on *tashhīr*. Thus, beating in addition to parading was discouraged. A tradition according to which the early judge Shurayḥ had beaten a false witness on his head with a whip was disregarded, or perhaps even intentionally overlooked. ‘Umar’s flogging of the false witness was described as an act of *siyāsa*. The inviolability of the human face was a major concern of the jurists, again except in cases of *siyāsa* justice, and shaving of the beard and hair was condemned. Likewise, the protection of legal nakedness (*ʿawra*) was carried over into the *ḥudūd* and *taʿzīr* punishments. Postclassical authors, however, tended to broaden the scope of the *siyāsa* doctrine and thus to give more leeway to *tashhīr* punishments. Real-life practice was endorsed and reinforced. Mutilation, for example, came to be defined more narrowly, thereby allowing for practices such as blackening the face. One can also detect an increased readiness to accept additional beating of the condemned.

On the one hand, then, the classical authors developed strategies to circumscribe *tashhīr*, in the same oblique way in which they sought to narrow the scope of *taʿzīr* in general. On the other hand, it appears that the seeds of a broad recognition of the *tashhīr* punishment are already planted in the writings of the jurists of the classical period. One wonders at the apparent contradiction. In conclusion, therefore, I would like to enumerate a number of reasons why the jurists, despite their skepticism toward state intrusion into

¹⁴⁹ Fīrūzābādī, *al-Qāmūs al-muḥīṭ*, I, 944; Muḥammad b. Muḥammad Murtaḍā al-Zabīdī, *Tāj al-ʿarūs* (Cairo: Dār al-Hidāya, n.d.), XXI, 234. See also Majd al-Dīn Abū l-Saʿādāt al-Mubārak b. Muḥammad Ibn al-Athīr, *al-Nihāya fī gharīb al-ḥadīth wa-l-aṥar* (Beirut: Dār al-Maktaba al-ʿIlmiyya, 1399/1979), II, 401, who equates the expression “I have made people hear about him [*sammaʿa tuḥū*]” with “I have made him public [*shahhartuḥū*].”

¹⁵⁰ Ibn ‘Ābidīn, *Hāshiya*, IV, 82.

¹⁵¹ Ibn Abī Shayba, *Musannaf*, V, 532, IV, 550 (*yuʿallimuhum*); Zaylaʿī, *Naṣb al-rāya*, IV, 88.

¹⁵² Ibn Abī Shayba, *Musannaf*, V, 558. ¹⁵³ Sarakhṣī, *Mabsūṭ*, XVI, 145.

¹⁵⁴ Kāsānī, *Badāʾī*, VI, 289. ¹⁵⁵ Ūshī al-Farghānī, *Fatāwā*, 481.

“what ought to be veiled,” could embrace *tashhīr* without much hesitation. Why, from the jurists’ perspective, was *tashhīr* an acceptable punishment? What was the legal and cultural context in which such a punishment made sense? It appears that an answer to this question would go a long way in explaining why *tashhīr* was such a widespread (and to all appearances a very effective) practice in medieval Islamic legal culture.

***Tashhīr* as talionic punishment**

Johansen, following Coulson’s lead, has argued that many of the punishments in Islamic criminal law (in particular the *ḥuqūq al-‘ibād*) never lost their character as private rights based on the principle of exchange between objects of equivalent value (*mithlī*).¹⁵⁶ This is akin to the idea of tit-for-tat punishments, a notion that was current in the Near East at least since the Code of Hammurabi. This talionic conception of the relation between crime and punishment is echoed in the way in which Muslim jurists thought about *tashhīr*. Ibn Taymiyya pointedly argues along these lines:

If the punishment can be of the same sort as the crime [*ma‘ṣiyya*], then the divine law prescribes that as far as possible the punishment should be so. This accords with what is reported from ‘Umar b. al-Khaṭṭāb concerning the false witness. He ordered that he should ride on a quadruped, turned backwards, with his face blackened: he twisted his speech around and therefore was turned around, and he blackened someone’s face with lies and therefore his face was blackened.¹⁵⁷

As this passage demonstrates, Ibn Taymiyya conceives of the punishment as mirroring the offense. In retaliation for speaking about someone’s ostensible transgressions in the public setting of the court room, false witnesses are themselves “made public.” For publicly disgracing another person with their testimony, they are disgraced by having their names and crimes called out during the *tashhīr* parade. In a similar vein, Sarakhsī argues that a witness earns honor (*mā’ al-wajh*) by virtue of his testimony; the perjurer pays for his crime with exactly what he has misappropriated at the expense of others: honor.¹⁵⁸ The damage done to others by virtue of false testimony, that is, the tarnishing of their honor, is inflicted on the offender as his due recompense. Any attack on another person’s honor thus can be retaliated for by the dishonor and shame suffered in ignominious parading.

This raises the question as to how one is to quantify a value as elusive as honor, or how to decide at what point honor is under attack. In medieval Islam, honor, which Frank Stewart defines as the “right to respect as an

¹⁵⁶ Johansen, “Eigentum, Familie und Obrigkeit,” 4, 62; Noel J. Coulson, “The State and the Individual in Islamic Law,” *International and Comparative Law Quarterly* 6 (1957), 49–60.

¹⁵⁷ Ibn Taymiyya, *Fatāwa*, XXVIII, 120. ¹⁵⁸ Sarakhsī, *Mabsūṭ*, XVI, 145.

equal,¹⁵⁹ was not something that everybody possessed to the same degree. I have already discussed the fact that notions of shame and inviolability of the body (*hurma*) could differ substantially according to gender and social rank, exempting certain classes of people (especially women) from *tashhīr*. Similar distinctions seem to have applied to the *tashhīr* punishment in general. In some tension with what I have described as the Islamic ethos of anti-exhibitionism, to call a thief a thief, according to some jurists, carried no punishment at all.¹⁶⁰ Conversely, blackening the face, whether by slander or false testimony, of someone considered a man of substance (*dhū l-hay'a*) tended to be punished harshly, including with *tashhīr*. Blackening the face of someone who was regarded as possessing only little honor was not punished to the same extent, especially if the offender was someone considered to possess honor. In general, a man considered honorable was less likely to be punished for false testimony, or for insult.¹⁶¹ The *locus classicus* for this view comes in Kāsānī's discussion of *ta'zīr*. Kāsānī distinguishes between four different classes of people who are to be punished in descending order of severity: (1) the notables among the notables (*ashrāf al-ashrāf*), that is, the descendants of the Prophet and the jurists, who are punished with a private reprimand from the judge; (2) the notables (*ashrāf*), that is, the landowners (*dahāqīn*) and military leaders (*quwwād*), who are punished with a reprimand from the judge in the public setting of the court; (3) the middle class (*awsāṭ*), that is, the market people (*sūqa*), who are punished with reprimand in the judge's court and imprisonment; (4) the vulgar (*akhissā'*), that is, the nether classes (*sifla*), who are punished with public reprimand, imprisonment, and beating.¹⁶² The cases of *tashhīr* in the historical sources for the most part reflect this division according to degree of honorability. Most victims of *tashhīr* were from among the market people and the nether classes. One may object to this that jurists and viziers – sometimes even rulers – were also paraded. However, this seems to have happened as the exception to the rule, especially in times of revolution or general social disintegration. In addition, it can be argued that the symbolic subtext of such instances of *tashhīr* functioned precisely to suggest that the offender had moved from one social class to another, lower one.

However, the mechanical logic of an-eye-for-an-eye was not the only rationale which the jurists proposed for *tashhīr*. Even if one takes into account Kāsānī's model, it is evident that honor constitutes a value that is

¹⁵⁹ Frank H. Stewart, "What Is Honor?," *Acta Historiae* 8, 1 (2000), 13. See further Stewart, *Honor* (Chicago: University of Chicago Press, 1994), 9–29.

¹⁶⁰ Qāḍikhān, *Fatāwā*, III, 479.

¹⁶¹ Marghinānī, *Hidāya*, II, 117; Qāḍikhān, *Fatāwā*, III, 480. Ibn Rushd is reported to have held similar views. See 'Ulaysh, *Sharḥ Mukhtaṣar Khalīl*, IX, 356–7.

¹⁶² Kāsānī, *Badā'ī*, VII, 64. This fourfold scheme is well known to both the postclassical Muslim jurists and Western legal historians. See *Ell*, s.v. *Ta'zīr*, VIII, 710a–711b ([W.] Heffening); Tyan, *Histoire*, 570–1; Johansen, "Eigentum, Familie und Obrigkeit," 50–1; Peters, *Crime and Punishment*, 33, 66. The principle that *ta'zīr* punishment is meted out according to social status found its way into the Ottoman Criminal Code. See *ibid.*, 97.

less easily quantifiable than, say, the value of an organ such as the eye (even though the latter too is somewhat elusive).¹⁶³ The concept of “water of the face,” or “face-blackening,” can be couched into legal categories only with great difficulty. This is perhaps why Ibn Qudāma’s attempt to establish financial recompensation for blackening of the face stands alone in the legal literature, and in fact was rejected by the Shāfi’īs with the argument that a blackened face was unlike anything for which *diya* can be specified.¹⁶⁴ The equivalent value (*mithlī*) of honor – this seems to underlie the Shāfi’ite opinion – cannot be expressed in concrete numerical terms. To use legal terminology, honor is not a fungible commodity. It seems, then, that more is at stake in *tashhīr* than just talionic tit-for-tat. Other motives, informed by deep-seated cultural and religious notions, lurk behind the jurists’ justification of *tashhīr*.

False testimony as a crime against the private sphere and against God

As noted earlier, definitions of *ta’zīr* were so broad that they included a plethora of offenses. These offenses were defined in the negative, that is, as those for which neither a *ḥadd* punishment nor talio nor a penitentiary act (*kaffāra*) was known to exist.¹⁶⁵ Sarakhsī stated that *ta’zīr* was necessary in retribution for committing a grave sin (*kabīra*).¹⁶⁶ In theory, then, all grave sins (*kabā’ir*), unless met by the divinely ordained punishments, were punishable by *ta’zīr*.¹⁶⁷ If one looks at the eschatological literature, one finds that by the time of the Saljūqs the number of grave sins had skyrocketed.¹⁶⁸ Jurists also defined the term *kabīra* rather broadly. Marghinānī included entering the bath-house without a loincloth and playing backgammon (*nard*) as well as chess among the grave sins.¹⁶⁹ Obviously, not all grave sins could possibly be punished with *ta’zīr*, and one may surmise that the jurists were well aware of this fact.

I have argued that the Ḥanafī jurists claimed a measure of discursive hegemony over the public sphere by, on the one hand, tolerating sodomy committed in private, and on the other hand recommending harsh punishment of the sodomite who had “come out.” I have claimed that it was the element of publicity of an act which turned a tolerated sin into a prosecutable

¹⁶³ The *diya* for the loss of an eye was usually fixed at half of the amount due for intentional homicide, i.e., 500 dinars or 50 camels. See *EI2*, s.v. *Diya*, II, 341a (E. Tyan).

¹⁶⁴ Ibn Qudāma, *Mughnī*, VIII, 379.

¹⁶⁵ See Kāsānī, *Badā’i*, VII, 63; Shīrāzī, *Muhadhdhab*, II, 288. The anonymous author of the mirror for princes entitled *Baḥr al-fawā’id* (written prob. between 1159 and 1161) states that, while backgammon is unlawful by consensus, chess is unlawful only according to Abū Ḥanīfa; the Shāfi’īs allow it under three conditions: that no wager be made, that prayer not be postponed, and that it not become obsessive. See anon., *Baḥr al-fawā’id* (tr. Meisami), 144.

¹⁶⁶ Sarakhsī, *Mabsūṭ*, XVI, 145.

¹⁶⁷ Ibn al-Humām also stated that false testimony was a grave sin (*kabīra*) for which the divine law had not specified anything; therefore it had to be punished with *ta’zīr*. See Ibn al-Humām, *Fath al-qadīr*, VII, 475; Zayla’ī, *Tabyīn al-ḥaqā’iq*, IV, 241.

¹⁶⁸ See ch. 3 of this study. ¹⁶⁹ Marghinānī, *Hidāya*, III, 123.

offense. This hypothesis is corroborated by the fact that the main reason for *tashhīr*, according to the jurists, was false testimony. False testimony was an offense that happened in the judge's court. Thus, it transported sins, *qua* utterances, into the public arena. It was an attack on the protective cover wrapped around the private lives of Muslims, a cover which was more often than not under attack from the repressive state institutions, especially in times as dangerous as the Saljūq period. False testimony constituted what Sarakhṣī termed "tearing apart the veil of integrity spread over the Muslims [*hatk sitr al-'iffa 'alā l-muslimīn*]." ¹⁷⁰ It is in this sense that Marghinānī could state that false testimony is an "injury that concerns all Muslims [*yata'addā qararuhā ilā l-muslimīn*]." ¹⁷¹ False testimony jeopardized the private space of freedom that was left to members of the medieval Muslim polity. By imposing *tashhīr* for false testimony the jurists sought to separate, and in fact protect, the private sphere from the public arena. *Tashhīr* was a spectacular punishment, no doubt, even given the standard of public violence in Saljūq times. But, in fact, the punishment corresponded to what the jurists considered a severe and socially disruptive crime.

In Marghinānī's characterization of false witnesses as a "detriment to the Muslims," perjury is aptly defined as an infringement upon the basic human right to safeguard one's honor and privacy. Here, *tashhīr* is first and foremost conceived as a right of man. However, *ta'zīr* was a residual category of punishment that aimed to protect both rights of men (*ḥuqūq al-'ibād*) and rights of God (*ḥuqūq Allāh*). ¹⁷² And, indeed, in addition to discussing *tashhīr* as a right of man, the jurists argued, somewhat implicitly, that false testimony also touched on God's interests.

Sarakhṣī, for example, recognized that men had a legitimate interest in knowing about the identity of the false witness, stating that "the function [*ma'nā*] of *tashhīr* is that the Muslims may inspect the affair." However, he also pointed out that "false testimony is among the gravest sins, it is on one level with polytheism, as God has declared: 'Avoid the impurity of idols and false testimony [*fa-ijtanibū l-rijs min al-awthān wa-ijtanibū qawl al-zūr*]!' [Qur'ān 22:30] ... God has likened false testimony against a Muslim to false testimony against Himself." ¹⁷³ According to a well-known tradition,

¹⁷⁰ Sarakhṣī, *Mabsūṭ*, IX, 85, XVI, 126.

¹⁷¹ Marghinānī, *Hidāya*, III, 132; Zayla'ī, *Tabyīn al-ḥaqā'iq*, VII, 476; Ibn 'Abidin, *Ḥashiya*, VII, 237, 238.

¹⁷² Kāsānī, *Badā'ī*, VII, 63. In this respect, it has elements both of the *ḥudūd*, which protect the rights of God only, and of *qisās*, which protects the rights of men. For the postclassical authors, see the references in Johansen, "Eigentum, Familie und Obrigkeit," 47 n. 184. See also Gräf, "Probleme der Todesstrafe im Islam," 99, who argues that *ta'zīr* became a punishment for infringements of the rights of God in the wake of the development of such concepts as *siyāsa* and *maṣlaḥa*.

¹⁷³ Sarakhṣī, *Mabsūṭ*, XVI, 145. The anonymous author of the mirror of princes known as *Baḥr al-fawā'id* also states that "God has equated false evidence with ascribing partners (to Him)." See *Baḥr al-fawā'id* (tr. Meisami), 101.

the Prophet had stated that “the three greatest sins are polytheism, disobedience toward parents, and false testimony.”¹⁷⁴ Also widespread was the Prophet’s saying that “false testimony is on a level with polytheism [*‘adulat shahādat al-zūr ishrākān bi-l-lāh*].”¹⁷⁵ The eschatological *ḥadīth* proved God’s anger against the false witness.¹⁷⁶ “God curses the false witness above his seven heavens” stated one tradition, albeit one considered unreliable (*daʿīf*).¹⁷⁷ As Sarakhṣī points out, false testimony (*shahādat al-zūr*) was like a corruption of the *shahāda*, the Islamic profession of faith, the act of declaring that “there is no god but God, and Muḥammad is the Messenger of God.” Thus, to bear false testimony in the public setting of the temporal judge’s court was, in a sense, to forswear God.¹⁷⁸

If one were to turn this equation around, Sarakhṣī would appear to suggest that any act of false testimony before the eternal Judge could be considered an instance of *shahādat al-zūr*, and punished accordingly, that is, with *tashhīr*. This would explain why the historical sources abound with cases of people who suffered *tashhīr* not because they committed perjury in the *qāḍī*’s court but because they were accused of having borne false testimony against God, either in acts of blasphemy or by other heretical actions and utterances. The chronicler Dhahabī reports that in the year

¹⁷⁴ Bukhārī, *Ṣaḥīḥ*, V, 2229, VI, 2535; Muslim, *Ṣaḥīḥ*, I, 91; Tirmidhī, *Sunan*, IV, 312, 548, V, 235; Bayhaqī, *al-Sunan al-kubrā*, X, 156 (repeated three times); Ibn Ḥanbal, *Musnad*, V, 36. The tradition is quoted in Sarakhṣī, *Mabsūṭ*, XVI, 64, 177; Kāsānī, *Badāʾiʿ*, VI, 289.

¹⁷⁵ Ṣanʿānī, *Muṣannaḥ*, VIII, 327; Abū Dāwūd, *Sunan*, III, 305; Ibn Māja, II, 794; Tirmidhī, *Sunan*, IV, 547; Ibn Ḥanbal, *Musnad*, IV, 178, 233, 321–2.

¹⁷⁶ See, for example: “The feet of the false witness will move forth on the Day of Resurrection until God imposes the Fire on him [*lan tazūlu qadamā shāhid al-zūr yawma l-qiyāma ḥattā yujību l-llāh lahu al-nār*].” See Ibn Māja, *Sunan*, II, 794; Bayhaqī, *al-Sunan al-kubrā*, X, 122; Ṭabarānī, *al-Muʿjam al-awṣaṭ*, VIII, 191; al-Ḥākim al-Nīsābūrī, *Mustadrak*, IV, 109; al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, II, 403, III, 164, XI, 63; Haythamī, *Majmaʿ al-zawāʾid*, X, 336; Abū Nuʿaym, *Ḥilyat al-awliyāʾ*, VII, 264; Muttaqī, *Kanz al-ʿummāl*, VII, 7–9. There was debate about the authenticity of this widely circulating tradition, many considering it to be *daʿīf*. See Abū Jaʿfar Muḥammad b. ʿAmr al-ʿUqaylī, *K. al-Duʿafā al-kabīr* (Beirut: Dār al-Maktaba al-ʿIlmiyya, 1404/1984), IV, 123; Ibn Ḥajar al-ʿAsqalānī, *Lisān al-mūzan* (3rd ed., Beirut: Muʿassasat al-ʿAḥadīth, 1406/1986), I, 412, III, 243, VI, 177; Aḥmad b. Abī Bakr al-Buṣṣīrī, *Miṣbāḥ al-zujāja fi Zawāʾid Ibn Māja* (Beirut: Dār al-ʿArabiyya, 1403/1982–3), III, 55. See also the following tradition: “On the Day of Resurrection, the false witness will be sent to stick his tongue into the Fire, like a dog sticks his tongue into filth.” See Abū ʿAbd Allāh Muḥammad b. Salāma al-Qudāʾī, *Musnad al-shihāb* (Beirut: Muʿassasat al-Risāla, 1985), I, 337; Muttaqī, *Kanz al-ʿummāl*, V, 144. Another example is: “The false witness is in the Fire, together with the collector of the tithes [*ashshār*].” See Ibn al-Jawzī, *al-ʿIlal al-mutanāhiyya fi-l-ahādīth al-wāhiyya* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1403/1983), II, 762. This tradition was usually regarded as spurious.

¹⁷⁷ Muḥammad b. Ṭāhir Ibn al-Qaysarānī, *Dhakhīrat al-ḥuffāz* (Riyadh: Dār al-Salaf, 1416/1996), III, 1496.

¹⁷⁸ Baber Johansen has argued that the act of bearing witness to Islam (*shahāda*) usually was conceived as lying outside the scope of *fiqh*, because it was regarded as an “interior [*bāʾin*]” action and therefore not an object of legal norms. See Johansen, “The Muslim *Fiqh* as a Sacred Law,” 35. *Shahādat al-zūr*, on the other hand, was an eminently public, “exterior [*ẓāhir*]” form of behavior.

571/1175–6 a miller in Baghdad refused to sell wheat to a customer – presumably simply because he did not like the man. “This is a right [I have] that is better than any right that God has [*ḥaqqun ‘alā mā huwa khayrun min Allāh*],” cried the miller; “I will not give it to you!” People testified against him, he was beaten a hundred lashes, his face was blackened, he was slapped in the face, and people threw stones at him in an act of *tashhūr*.¹⁷⁹ In 567/1172, the teacher Abū l-Faṭḥ at the Sulṭān *madrasa* in Baghdad was paraded for beginning a lecture with the disputed theologoumenon that God was not a thing (*laysa bi-mawjūdīn*).¹⁸⁰ The school teacher Ibn al-Adīb in 521/1127,¹⁸¹ and a *ṣūfī* preacher named Badīʿ in 547/1152,¹⁸² were paraded in Baghdad because they were accused of propagating extremist Shīʿite beliefs. One would not be surprised to find that periods in Islamic history that were marked by a collective hysteria against other faith communities were especially rich in *tashhūr* trials. As is well known, in the Saljūq period, there was great fear of attacks by Ismāʿīlīs and a general tendency to blame them for the precarious political situation. The pogroms at Iṣfahān in 494/1101 and elsewhere correlate with the descriptions of *tashhūr* processions of captured or dead Ismāʿīlīs, such as that of Ibn al-ʿAṭṭāsh in 500/1107 at Iṣfahān. It appears, then, that false testimony in the narrow sense of bearing testimony in court could function as a prototype case (*aṣl*) under which the jurists subsumed a plethora of other offenses such as blasphemy and acts of heresy.¹⁸³

In conclusion, the jurists of Islam embraced *tashhūr*, a popular and widely practiced punishment in Saljūq times, because it fulfilled various important functions. First, on the most basic level, the punishment protected the *qāḍī* court against perjury.¹⁸⁴ Second, it helped to buttress the social hierarchy by showing who deserved to be honored and who did not, and who could be shamed and who could not. Third, *tashhūr* served to negotiate the fine line between public and private, thereby reminding society at large of the duty to

¹⁷⁹ Dhahabī, *Tārīkh al-Islām*, XL, 13. ¹⁸⁰ Ibn al-Jawzī, *Muntaẓam*, XVIII, 196.

¹⁸¹ *Ibid.*, XVII, 245–6. ¹⁸² *Ibid.*, XVIII, 84.

¹⁸³ Swartz, *K. al-quṣṣās*, 32–3, relates that in 571 caliph al-Mustaḍīʿ gave Ibn al-Jawzī power to search and raze the houses of heretics, to humiliate them in public, and to have them sent to prison. As Swartz argues, this was the context in which Ibn al-Jawzī wrote his *Tablīs Iblīs*. See, for example, Ibn Nujaym, *Rasāʾil*, 117, who endorses *tashhūr* for bribing a judge. It appears that the process of broadening the reasons for *tashhūr* reached a high point in the Mamlūk period in Egypt, at least judging from the historical sources. See *MA*, III. The jurists’ use of *tashhūr* seems to reflect an attempt to extend *sharʿa* law into provinces commonly regarded as lying outside it, that is, in the realm of political expediency and state-run criminal jurisdiction. On the tendency among students of Islamic law to consider Islamic criminal jurisdictions to lie outside *sharʿa*, i.e., the specifically religious sphere, see Frank E. Vogel’s recent comments in “The State of the Field: A Major Advance Is Imminent,” *Newsletter of the Islamic Legal Studies Program at Harvard Law School* 11, 2 (2006), 3.

¹⁸⁴ Another reaction against the threat of perjury was the institutionalization of the office of witness examiners (*aṣḥāb al-masāʾil*). See Hallaq, *The Origins and Evolution of Islamic Law*, 85–7.

keep forbidden actions secret and to abide by common norms of decency. Finally, *tashhīr* could be used as a lever against heterodoxy, since the punishment for untruthful statements before the temporal judge was extended to any statement that was held to be contrary to the Truth revealed by the eternal Judge. *Tashhīr* was a multidimensional and multifunctional punishment that deserves to be recognized as being of central importance to the development of Islamic punitive practices in premodern times.

Conclusion

When Sanjar, the last Saljūq ruler of Khurāsān, was defeated and captured by a band of Ghuzz tribesmen in 548/1153, to many contemporaries it seemed as if the end of an era had arrived. Sanjar's sixty-year reign over the eastern part of the Saljūq empire had not been devoid of social unrest: unruly Turkish nomads made the roads unsafe, the *'aqqārūn* and religious factions fought each other in the cities, and troops of Ismā'īlī guerillas continued to plague the land.¹ Public violence and punishment were features of daily life. However, the orgy of violence that broke out after Sanjar's defeat was unprecedented, and remained so until the Mongol invasion some eighty years later. At Marv, the Saljūq stronghold in the east, the Ghuzz plundered the royal palace and indiscriminately tortured people to reveal where they had hidden their riches (*bi-anwā'-i shikanja ū 'adhāb ranja mī-dashtand*). Then they marched on Nīshāpūr, a densely populated town and important center of learning. Joined by the local riffraff (*awbāsh*) and some of the Saljūq soldiery, they ravaged the city. A great number of inhabitants were either tortured or put to the sword; a large group of people who had sought refuge in the Congregational Mosque, including women and children, were brutally slaughtered; whole neighbourhoods went up in flames. According to the chronicler Nīshāpūrī, the inner city was destroyed to such a degree that it "became a grazing field for cattle and a hiding place for wild animals and beasts."² In the ensuing chaos, East Iran became a playground for bandits, plundering nomads, marauding Saljūq soldiers, and Ismā'īlī bands, all seeking to feast on the spoils of the Saljūqs' demise.³ The period between the fall of Sanjar and the arrival of the Mongol armies is perhaps best compared to the

¹ Bosworth, "The Political and Dynastic History of the Iranian World," 151.

² Nīshāpūrī, *Saljūqnāma*, 49–51; Rāwandī, *Rāhat al-sudūr*, 177–82. The rage of the Ghuzz vented itself also (though not primarily) against scholars. See Bulliet, *The Patricians of Nishapur: A Study in Medieval Islamic Social History* (Cambridge: Harvard University Press, 1972), 73–5, 254–5.

³ Rāwandī, *Rāhat al-sudūr*, 177–82. In 549/1154, a force of 7,000 Kūhistān Ismā'īlīs attacked Khurāsān while the Saljūq forces were being distracted by the Ghuzz. In 551/1156, an Ismā'īlī army sacked Tabas, killing many. See Bosworth, "The Political and Dynastic History of the Iranian World," 151.

horrors of the Thirty Years War that ravaged large parts of Germany in the seventeenth century.⁴

In these troubled times, the poet Anvarī (d. c. 560/1164) composed a famous *qaṣīda*, addressed to the Khān in Samarkand, lamenting the destruction of Khurāsān.⁵ In this poem, he prophesied that Iran, “which had been envied by Paradise itself,” was going to remain under the tyrannical rule of the Ghuzz until the Day of Resurrection. In fact, according to Anvarī, Khurāsān had already turned into hell (*az zulm-i Ghuzzān shud chū saqar*).⁶ To Anvarī it appeared as if the end of all things was approaching fast, or as if in fact the punishments of hell had already arrived.⁷ The disintegration of the Saljūq domain ushered in a time ripe for apocalyptic movements.⁸

The administration of punishment by the Saljūq state had been perceived by people as hellish in many respects. In retrospect, however, Saljūq oppression must have seemed much more desirable than the random havoc and murder wrought by the bands of antisocial ruffians. The ideology of *siyāsa*, granting the ruler authority to punish at will as long as he kept the lands pacified, and the jurists’ acknowledgment, within limits, of the state’s unrestricted use of punitive measures, with hindsight must have made some sense after all. This point is significant because, if we want to assess the place of punishment in the larger context of Saljūq society, we must keep in mind the

⁴ Kermani, *Der Schrecken Gottes*, 93.

⁵ The poem was paraphrased by William Kirkpatrick under the title “The Tears of Khorassan” (*Asiatick Miscellany*, Calcutta, 1785) and gained a certain reputation in the West. See Arberry, *Classical Persian Literature*, 117. See further Charles Ambrose Storey and François de Blois, *Persian Literature: A Bio-Bibliographical Survey* (London: Luzac, 1953–), V, 256–7.

⁶ Anvarī, *Dīwān*, 203.1–2.

⁷ The most forceful expression of this pessimistic sentiment in the Islamic literary tradition is the work of Farid al-Dīn ‘Aṭṭār (d. c. 617/1220), especially his *Muṣibatnāma* (“The Book of Afflictions”). See Hellmut Ritter, *Das Meer der Seele: Mensch, Welt und Gott in den Geschichten des Fariduddin Attar* (Leiden: Brill, 1955). On the *Muṣibatnāma* in particular, see Kermani, *Der Schrecken Gottes*.

⁸ See Kermani, *Der Schrecken Gottes*, 88–95. Other examples show the millenarian mood of the period. When Sanjar defeated his nephew Maḥmūd in 513/1119, he was eulogized by the *raʿīs* of Bayhaq as the king promised by the Prophet who would usher in the end of times. See Ibn Funduq, *Tārīkh-i Bayhaq*, 100. In the month of Ramaḍān 559/July 1164, the Ismāʿīlī leader Ḥasan ‘alā dhikrihi salām declared in a public ceremony that the *sharʿa* had been abrogated because the Day of Resurrection had arrived. Bernard Lewis sees in this incident “[t]he culmination of a millenarian and antinomian tendency which is recurrent in Islam”: *The Assassins: A Radical Sect in Islam* (London: Weidenfeld and Nicolson, 1967), 73. Jāmī (d. 898/1492), in his *Nafahat al-uns*, relates that the *ṣūfi* preacher Abū Naṣr Aḥmad-i Jām (d. 536/1141) called people to repentance (*tawba*) in his home-town of Jām. There may be a good deal of hagiographic exaggeration in Jāmī’s account (Aḥmad-i Jām allegedly succeeded in converting 600,000 men to his cause), but one wonders if millenarian or penitential movements were common in the sixth/twelfth century. See LN, s.v. Abū Naṣr Aḥmad; Schimmel, *Mystical Dimensions of Islam*, 244. On Aḥmad-i Jām’s intimate relationship with the Saljūq régime, especially sulṭān Sanjar, see Safī, *The Politics of Knowledge*, 144–57. See also Hamid Dabashi, “Historical Conditions of Persian Sufism During the Seljuk Period,” in Leonard Lewisohn (ed.), *Classical Persian Sufism: From Its Origins to Rumi* (London: Khaniqahi Nimatullah Publications, 1993), 143; Jacqueline Chabbi, “Remarques sur le développement historique des mouvements ascétiques et mystiques au Khurasan,” *SI* 46 (1977), 41–5, 55–9.

precariousness of life and the general feeling of insecurity of the subjects of Saljūq rule. These conditions helped to create an attitude, which, as Huizinga put it, “in any crisis looks to the power of the state to implement a reign of terror.”⁹

Huizinga considered the stern, or even cruel, sense of justice of the Middle Ages as an innate feature of the medieval mindset, which “knew only two extremes: the full measure of cruel punishment or mercy.”¹⁰ Such an approach tends to stress the complete “otherness” of the Middle Ages, thereby creating a comfortable distance between “us” and “them.” However, if one analyzes the administration of punishment in premodern societies in the light of their specific cultural circumstances, this perceived alterity turns out to be largely illusionary. One goal of this study has been to show the diversity of social discourses on the question of justice and punishment. As is the case in modern societies, there was no monolithic medieval Islamic attitude toward these issues; rather, different segments of society developed their own strategies of rationalization and mitigation to cope with the reality of political rule.

This study has argued that punishment under the Saljūqs was a crucial social practice. While the Saljūq rulers reserved a private sphere of punishment for themselves and their retinue, public punishment served them as a political tactic to demonstrate and reinforce their claims to power and to just government. This is not especially surprising, even though I hope to have laid open these mechanisms in more detail and with more analytical precision than has hitherto been done. What is noteworthy, rather, is that the ideology of *siyāsa* propagated by courtly panegyrics, mirrors for princes, and the public spectacle of punishment did not achieve hegemony over the minds of people. Those who came under punishment’s sway, whether directly as victims or indirectly as spectators, did not just acquiesce, even if their space for maneuver was small. As I suggest, avenues for resisting the imposition of false consciousness from above were available not just to a few intellectually gifted individuals, but to wider circles of society.¹¹ The two most important of these avenues were constituted by the eschatological and the legal idiom.

Eschatology offered the possibility of coming to grips with the existential discomfort that state punishment occasioned, and to find creative responses to a living situation often marked by unbearable insecurity. Visions of punishment in the hereafter did not, as is usually assumed, merely serve to exculpate, or sanctify, injustices committed in this world. They functioned,

⁹ Huizinga, *The Autumn of the Middle Ages*, 20.

¹⁰ *Ibid.*, 22. For a critical assessment of the political implications of depicting the Middle Ages as particularly cruel, and thereby “otherizing” them, see Groebner, *Defaced*, introduction; Robert Mills, *Suspended Animation: Pain, Pleasure and Punishment in Medieval Culture* (London: Reaktion Books, 2005), 7–22.

¹¹ Here, I believe, is where my approach differs significantly from that espoused by Omid Safi in *The Politics of Knowledge*, a book which otherwise would seem a perfect partner in dialogue for the present one.

as this study has argued, in more dynamic, psychologically complex ways than the simple theodicy of “now you suffer but later you will be rewarded” can explain. This is shown by the simple fact that popular traditions of eschatology often express a feeling of the uncertainty of salvation, rather than an optimistic view of the afterlife, a trend in Islamic religious history whose impact has, to my mind, been underestimated by researchers in the field. As I have suggested, one important function of these traditions was to speak not to a distant eschatological future but, rather, to very tangible contemporary concerns and experiences. Such use of the religious *imaginaire* of hell has its parallels in other cultural traditions. Lucretian (d. 55 AC), for example, had an inkling of this. He reasoned that

all punishments which tradition tells us occur in the Achéron, all of them, whatever they be, can be found in our life . . . imprisonment, falling from high rocks, whips, executioners, chains, pitch, red-hot blades and torches; and even in the absence of these punishments, souls conscious of their crimes and terrorized by the thought of them put the needle to themselves and castigate themselves, without seeing what perhaps could be the end of their sufferings . . . instead fearing that they will ever increase after death.¹²

Hell, as people in Saljūq times conceptualized it, was spatially, temporally, and conceptually contiguous with this world. One is reminded of Mephistoteles’ emphatic lines in Marlowe’s *Doctor Faustus*: “Hell hath no limits, nor is circumscrib’d in one self place; for where we are is Hell, and where Hell is, there must we ever be.”¹³ Hell came to function as a template for thinking about life on earth. As I suggest, this could happen not only in the self-destructive manner that Lucretian disliked so much, but also in a rather positive and constructive way. Descriptions of punishment in the hereafter offered an idiom by which the sufferances of the common people could be verbalized. Thereby a measure of agency was regained without running the danger of provoking the suspicion of the state. In oblique ways, depictions of hell could also serve to criticize the authorities and thereby genuinely empower the subjects of temporal rule.

The jurists, largely divested of the power to prosecute even in their characteristic domain of the divinely ordained punishments, found other ways to mitigate the impact of punishment by the state. This study has described two of their strategies to achieve this agenda. The Ḥanafīs, who later became the most influential legal school in Islam, argued against analogical extensions of *ḥadd* norms in order to reduce the scope of criminal law. As noted, the formula attributed to Abū Ḥanīfa, *lā qiyāsa fī l-ḥudūd* (“no analogy in the divinely ordained punishments”), bears an interesting resemblance with the *nulla poena sine lege* doctrine developed by the German jurist Feuerbach

¹² Lucretian, *De nature rerum*, III, 978–1024, quoted in George Minois, *Histoire de l'enfer* (Paris: Presses Universitaires de France, 1994), 29–31.

¹³ Christopher Marlowe, *Doctor Faustus* (New York: St. Martin’s Press, 1993), A II, i:124–6.

(d. 1833). I have argued that, while Feuerbach and the Ḥanafis developed their position under radically different circumstances, both shared the conviction that the law had to be protected from excessive and arbitrary uses of coercive force by the repressive state apparatus. This is further evidenced by the limited use of *a fortiori* extensions of ḥadd norms according to what seems to have been a majority Ḥanafī position. The example that I have discussed is the question of whether sodomy is to be subsumed under fornication, and punished accordingly. However, it is to be expected that similar discussions informed a plethora of other offenses and their respective punishments.

That the Ḥanafīs were engaged in protecting the private sphere of individual freedom from the public sphere of state intervention can also be seen in the field of discretionary punishment (*ta'zīr*). Even more than ḥadd punishment, *ta'zīr* fell under the authority of the state. It is therefore all the more difficult to show convincingly how legal theory could have determined, or at least influenced, punitive practices. One way out of this difficulty is to argue, as I have done, that legal discourse *was* in fact a form of practice, a practice which could create, on a broad basis, certain moral preferences and propensities for action (an “ethos,” as Clifford Geertz would call it). In the field of *ta'zīr*, the Ḥanafīs and all other schools developed oblique ways to protect the individual. They notably argued that only offenses committed in public were punishable. Thereby they safeguarded the private sphere of the Muslim households, while at the same time reinforcing the Islamic ethos of anti-exhibitionism. This basic agenda of the jurists also explains their interest in *tashhīr*, a punishment of central importance in the administration of penal justice under the Saljūqs and throughout the Islamic Middle Ages. Legal discussions of *tashhīr* are remarkably subtle and multifaceted, which suggests that they were written with punitive practice in mind.

It is difficult to summarize in a few words all observations made and conclusions reached in a multilayered and crossdisciplinary study such as the present one. Justice under the Saljūqs was conceptualized and executed on different levels of social hierarchy and *de facto* power. Both the eschatologists and jurists skillfully managed to mobilize Islamic cultural resources to carve out a space of individual liberty of action and thought vis-à-vis the state. They did this within the parameters of a highly militarized and unstable political régime. Arguably, therefore, we have good reason to regard their efforts as a great achievement.

Bibliography

Note: Since this study was researched and written on three different continents, I have not always been able to use the same edition of one work. Footnotes, unless otherwise specified, always refer to the first edition cited in this bibliography.

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